TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 48

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI, PETITIONER,

vs.

PHILIP ELTING, COLLECTOR OF CUSTOMS OF THE PORT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 29, 1932

CERTIORARI GRANTED MAY 23, 1932

(36,716)

(36,716)

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IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

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LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI,

against

PHILIP ELTING, Collector of Customs of the Port of New York

SUMMONS

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken again you by default for the relief demanded in the complaint.

Witness the Honorable, John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 22nd day of July, A. D. 1929.

Alex. Gilchrist, Jr., Clerk. Kirlin, Campbell, Hickox, Keating & McGrann, Plaintiff's Attorney-. Office and Post Office address: 27 William Street, Borough of Manhattan, City of New York.

[fol. 2] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT

The plaintiff, by its attorneys, Kirlin, Campbell, Hickox, Keating & McGrann and Gaspare M. Cusumano, for its causes of action herein, on information and belief, alleges:

First. Lloyd Sabaudo Societa Anonima per Azioni is a corporation duly organized and existing under the laws of the Kingdom of Italy and is engaged in the carriage of passengers and freight as a common carrier by water between ports of Italy and ports in the United States.

Second. The defendant at the times hereinafter mentioned was, and now is, the duly appointed, qualified and acting Collector of Customs at the Port of New York.

For Its First Cause of Action

Third. On or about the 22nd day of November, 1923, the plaintiff paid to the defendant under protest the sum of $282.08, which defendant demanded and received as a con- [fol. 3] dition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $200 and a refund of $82.08 passage money on account of an alleged violation by the plaintiff of Section 9 of the Immigration Act of February 5, 1917, for having brought to the United States an alien Giaconda Tommaso, alleged to be feeble-minded and therefore an inadmissible alien.

Fourth. Prior to accepting said Giaconda Tommaso as a passenger, her passport had been duly visaed by an American Consul in Italy, and the plaintiff caused her to be subjected to, and she was subjected to, competent medical examinations which showed her to be free of any of the disabilities or diseases specified in Section 9 or Section 35 of the Immigration Act of February 5, 1917, and plaintiff alleges that the said Giaconda Tommaso was free of any such disabilities or diseases including feeble-mindedness, or if she was so afflicted, the fact could not have been detected by means of a competent medical examination at the time of her embarkation.

Fifth. Notwithstanding the diligence exercised by the plaintiff, as aforesaid to ascertain the admissibility of said alien before embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the aforesaid fine of $200 and directed the return of passage money in the sum of $82.08.

[fol. 4] Sixth. The action of the defendant herein in demanding and receiving payment of said sum of $282.08 was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Seventh. Repayment of said sum of $282.08 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its first cause of action, for $282.08, with interest and costs and all other appropriate relief.

For Its Second Cause of Action

Eighth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Ninth. On or about the 21st day of February, 1924, the plaintiff paid to the defendant under protest the sum of $102.40, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $25 and a refund of $77.40 passage money on account of an alleged violation by the plaintiff of Section 9 of the Immigration Act of February 5, 1917, for having brought [fol. 5] to the United States an alien Francesco Marrara, alleged to be afflicted with an abnormal systemic condition and therefore an inadmissible alien.

Tenth. Prior to accepting said Francesco Marrara as a passenger, his passport had been duly visaed by an American Consul in Italy, and the plaintiff caused him to be subjected to, and he was subjected to, competent medical examinations which showed him to be free of any of the disabilities or diseases specified in Section 9 or Section 35 of the Immigration Act of February 5, 1917, and plaintiff alleges that the said Francesco Marrara was free of any such disabilities or diseases including abnormal systemic condition, or if he was so afflicted the fact could not have been detected by means of a competent medical examination at the time of his embarkation, or if the alien was afflicted

with a physical defect and it might have been detected, it was such that it did not affect his ability to earn a living.

Eleventh. Notwithstanding the diligence exercised by the plaintiff, as aforesaid to ascertain the admissibility of said alien before embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily and without warrant of law imposed the aforesaid fine of $25 and directed the return of passage money in the sum of $77.40.

Twelfth. The action of the defendant herein in demanding and receiving payment of said sum of $102.40 was un- [fol. 6] warranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Thirteenth. Repayment of said sum of $102.40 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its second cause of action for $102.40, with interest and costs and all other appropriate relief.

For Its Third Cause of Action

Fourteenth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Fifteenth. On or about the 21st day of February, 1924, the plaintiff paid to the defendant under protest the sum of $106.80, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $25.00 and a refund of $81.80 passage money on account of an alleged violation by the plaintiff of Section 9 of the Immigration Act of February 5, 1917, for having brought to the United States an alien Eugenio Sbragia, alleged to be [fol. 7] afflicted with valvular disease and therefore an inadmissible alien.

Sixteenth. Prior to accepting said Eugenio Sbragia as a passenger his passport had been duly visaed by an Ameri-

can Consul in Italy, and the plaintiff caused him to be subjected to, and he was subjected to, competent medical examinations which showed him to be free of any of the disabilities or diseases specified in Section 9 or Section 35 of the Immigration Act of February 5, 1917, and plaintiff alleges that the said Eugenio Sbragia was free of any such disabilities or diseases including valvular disease, or if he was so afflicted, the fact could not have been detected by means of a competent medical examination at the time of his embarkation, or if the alien was afflicted with a physical defect, and it might have been detected, it was such that it did not affect his ability to earn a living.

Seventeenth. Notwithstanding the diligence exercised by the plaintiff, as aforesaid, to ascertain the admissibility of said alien before embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the aforesaid fine of $25.00 and directed the return of passage money in the sum of $81.80.

Eighteenth. The action of the defendant herein in demanding and receiving payment of said sum of $106.80 was unwarranted in law and was an arbitrary and excessive ex- [fol. 8] ercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Nineteenth. Repayment of said sum of $106.80 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its third cause of action, for $106.80 with interest and costs and all other appropriate relief.

For Its Fourth Cause of Action

Twentieth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Twenty-first. On or about the 18th day of January, 1924, the plaintiff paid to the defendant under protest the sum of $283.51, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of

the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $200 and a refund of $83.51 passage money on account of an alleged violation by the plaintiff of Section 9 of the Immigration Act of February 5, 1917, for having brought to the United States an alien Ferdinando Lofredo, alleged to be afflicted with trachoma and therefore an inadmissible alien.

[fol. 9] Twenty-second. Prior to accepting said Ferdinando Lofredo as a passenger, his passport had been duly visaed by an American Consul in Italy, and the plaintiff caused him to be subjected to, and he was subjected to competent medical examinations which showed him to be free of any of the disabilities or diseases specified in Section 9 or Section 35 of the Immigration Act of February 5, 1917, and plaintiff alleges that the said Ferdinando Lofredo was free of any such disabilities or diseases including trachoma, or if he was so afflicted, the fact could not have been detected by means of a competent medical examination at the time of his embarkation.

Twenty-third. Notwithstanding the diligence exercised by the plaintiff, as aforesaid, to ascertain the admissibility of said alien before embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the aforesaid fine of $200.00 and directed the return of passage money in the sum of $83.51.

Twenty-fourth. The action of the defendant herein in demanding and receiving payment of said sum of $283.51 was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Twenty-fifth. Repayment of said sum of $283.51 has been duly demanded by the plaintiff, but the defendant has neg-
[fol. 10] lected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its fourth cause of action, for $283.51, with interest and costs and all other appropriate relief.

For Its Fifth Cause of Action

Twenty-sixth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Twenty-seventh. On or about the 21st day of February, 1924, the plaintiff paid to the defendant under protest the sum of $287.63, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $200.00 and a refund of $87.63 passage money on account of an alleged violation by the plaintiff of Section 9 of the Immigration Act of February 5, 1917, for having brought to the United States an alien Angelo Capaldo, alleged to be afflicted with trachoma and therefore an inadmissible alien.

Twenty-eighth. The said alien did not intend to enter the United States, and prior to accepting said Angelo Capaldo as a passenger, an American Consul in Italy issued to him a transit certificate and the plaintiff caused him to be subjected to, and he was subjected to, competent medical examinations which showed him to be free of any of the dis- [fol. 11] abilities or diseases specified in Section 9 or Section 35 of the Immigration Act of February 5, 1917, and plaintiff alleges that the said Angelo Capaldo was free of any such disabilities or diseases including trachoma, or if he was so afflicted, the fact could not have been detected by means of a competent medical examination at the time of his embarkation.

Twenty-ninth. Notwithstanding the diligence exercised by the plaintiff, as aforesaid, to ascertain the admissibility of said alien before embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the aforesaid fine of $200.00 and directed the return of passage money in the sum of $87.63.

Thirtieth. The action of the defendant herein in demanding and receiving payment of said sum of $287.63 was unwarranted in law and was arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Thirty-first. Repayment of said sum of $287.63 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its fifth cause of action, for $287.63, with inter-
[fol. 12] est and costs and all other appropriate relief.

For Its Sixth Cause of Action

Thirty-second. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Thirty-third. On or about the 6th day of February, 1924, the plaintiff paid to the defendant under protest the sum of $285.40, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $200.00 and a refund of $85.40 passage money on account of an alleged violation by the plaintiff of Section 9 of the Immigration Act of February 5, 1917, for having brought to the United States an alien Giuseppe Cecconi, alleged to be afflicted with ringworm of the nails and therefore an inadmissible alien.

Twenty-fourth. Prior to accepting said Giuseppe Cecconi as a passenger, his passport had been duly visaed by an American Consul in Italy, and the plaintiff caused him to be subjected to, and he was subjected to, competent medical examinations which showed him to be free of any of the disabilities or diseases specified in Section 9 or Section 35 of the Immigration Act of February 5, 1917, and plaintiff alleges that the said Giuseppe Ceccioni was free of any such dis-
[fol. 13] abilities including ringworm of the nails, or if he was so afflicted, the fact could not have been detected by means of a competent medical examination at the time of his embarkation.

Twenty-fifth. Notwithstanding the diligence exercised by the plaintiff as aforesaid to ascertain the admissibility of said alien before embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the afore-

said fine of $200.00 and directed the return of passage money in the sum of $85.40.

Twenty-sixth. The action of the defendant herein in demanding and receiving payment of said sum of $285.40 was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Twenty-seventh. Repayment of said sum of $285.40 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its sixth cause of action for $285.40 with interest and costs and all other appropriate relief.

For Its Seventh Cause of Action

Twenty-eighth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

[fol. 14] Twenty-ninth. On or about the 19th day of August, 1924, the plaintiff paid to the defendant under protest the sum of $281.36, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $200 and a refund of $81.36 passage money on account of an alleged violation by the plaintiff of Section 9 of the Immigration Act of February 5, 1917, for having brought to the United States an alien Pasquale Giustino, alleged to be afflicted with tuberculosis and therefore an inadmissible alien.

Thirtieth. Prior to accepting said Pasquale Giustino, as a passenger, his passport had been duly visaed by the American Consul in Italy, and the plaintiff caused him to be subjected to, and he was subjected to, competent medical examinations which showed him to be free of any of the disabilities or diseases specified in Secton 9 or Section 35 of the Immigration Act of February 5, 1917, and plaintiff alleges that the said Pasquale Giustino was free of any such disa-

bilities or diseases including tuberculosis, or if he was so afflicted, the fact could not have been detected by means of a competent medical examination at the time of embarkation.

Thirty-first. Notwithstanding the diligence exercised by the plaintiff, as aforesaid, to ascertain the admissibility of said alien before embarkation, evidence of which was duly [fol. 15] submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the aforesaid fine of $200.00 and directed the return of passage money in the sum of $81.36.

Thirty-second. The action of the defendant herein in demanding and receiving payment of said sum of $281.36 was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs and by reason thereof the plaintiff was deprived of its property without due process of law.

Thirty-third. Repayment of said sum of $281.36 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its seventh cause of action, for $281.36, with interest and costs and all other appropriate relief.

For Its Eighth Cause of Action

Thirty-fourth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Thirty-fifth. On or about the 8th day of January, 1925, the plaintiff paid to the defendant under protest the sum of $283.65, which defendant demanded and received as a condition to granting clearance papers to one of the vessels [fol. 16] of the plaintiff about to sail from the port of New York on the ground that plaintiff was subject to a penalty of $200 and a refund of $83.65 passage money on account of an alleged violation by the plaintiff of Section 9 of the Immigration Act of February 5, 1917, for having brought to the United States an alien Giuseppe Calabrese, alleged to be afflicted with tuberculosis of the skin and therefore an inadmissible alien.

Thirty-sixth. Prior to accepting said Giuseppe Calabrese as a passenger, his passport had been duly visaed by an American Consul in Italy, and the plaintiff caused him to be subjected to, and he was subjected to competent medical examination which showed him to be free of any of the disabilities or diseases specified in Section 9 or Section 35 of the Immigration Act of February 5, 1917, and plaintiff alleges that the said Giuseppe Calabrese was free of any such disabilities including tuberculosis of the skin, or if he was so afflicted, the fact could not have been detected by means of a competent medical examination at the time of his embarkation.

Thirty-seventh. Notwithstanding the diligence exercised by the plaintiff, as aforesaid to ascertain the admissibility of said alien before embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the aforesaid fine of $200 and directed the return of passage money in the sum of $83.65.

[fol. 17] Thirty-eighth. The action of the defendant herein in demanding and receiving payment of said sum of $283.65 was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Thirty-ninth. Repayment of said sum of $283.65 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore, plaintiff demands judgment against the defendant on its eighth cause of action, for $283.65, with interest and costs and all other appropriate relief.

For Its Ninth Cause of Action

Fortieth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Forty-first. On or about the 23rd day of June, 1923, the plaintiff paid to the defendant under protest the sum of $200.00, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of

the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $200.00 on account of an alleged violation by the plaintiff of Section 9 of the Immigration Act of February 5, 1917, for having brought to the United States an alien Gemma Rullo, alleged [fol. 18] to be afflicted with Ringworm of the Nails and therefore an inadmissible alien.

Forty-second. Prior to accepting said Gemma Rullo as a passenger, her passport had been duly visaed by an American Consul in Italy, and the plaintiff caused her to be subjected to, and she was subjected to, competent medical examinations which showed her to be free of any of the disabilities or diseases specified in Section 9 or Section 35 of the Immigration Act of February 5, 1917, and plaintiff alleges that the said Gemma Rullo was free of any such disabilities or diseases including Ringworm of the Nails, or if she was so afflicted, the fact could not have been detected by means of a competent medical examination at the time of her embarkation.

Forty-third. Gemma Rullo was subsequently admitted to the United States, but notwithstanding that fact, and notwithstanding the diligence exercised by the plaintiff, as aforesaid, to ascertain the admissibility of said alien before embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the aforesaid fine of $200.00.

Forty-fourth. The action of the defendant herein in demanding and receiving payment of said sum of $200.00 was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

[fol. 19] Forty-fifth. Repayment of said sum of $200.00 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore, plaintiff demands judgment against the defendant on its ninth cause of action, for $200.00 with interest and costs and all other appropriate relief.

For Its Tenth Cause of Action

Forty-sixth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Forty-seventh. On or about the 21st day of February, 1927, the plaintiff paid to the defendant under protest the sum of $1,095, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $1,000 and the payment of a refund of $95 passage money on account of an alleged violation by the plaintiff of Section 26 of the Immigration Act of 1924, for having brought to the United States an alien Giuseppe Fusco, alleged to be afflicted with tuberculosis and therefore an inadmissible alien.

Forty-eighth. Prior to the acceptance of said Giuseppe Fusco by the plaintiff as a passenger, his passport had been duly visaed by an American Consul in Italy, and the plaintiff [fol. 20] caused him to be subjected to, and he was subjected to, competent medical examination which showed him to be free of any of the disabilities or diseases specified in Section 26 of the Immigration Act of 1924, and plaintiff alleges that the said Giuseppe Fusco was free of any such disabilities or diseases including tuberculosis, or if he was so afflicted the fact could not have been detected by means of a competent medical examination at the time of his embarkation.

Forty-ninth. The said Giuseppe Fusco had been in the United States on five previous occasions, and on the last occasion had resided continuously in the United States for a period of seven years. The only officials competent to determine his admissibility were in the United States and the plaintiff was not guilty of any violation of the Immigration Act in bringing said alien to the United States for examination as to his admissibility.

Fiftieth. Notwithstanding the diligence exercised by the plaintiff, as aforesaid, to ascertain the admissibility of said alien before embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the afore-

said fine of $1,000 and directed the return of passage money in the sum of $95.

Fifty-first. The action of the defendant herein in demanding and receiving payment of said sum of $1,095, was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason [fol. 21] thereof the plaintiff was deprived of its property without due process of law.

Fifty-second. Repayment of said sum of $1,095 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its tenth cause of action for $1,095 with interest and costs and all other appropriate relief.

For Its Eleventh Cause of Action

Fifty-third. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Fifty-fourth. On or about the 28th day of February, 1927, the plaintiff paid to the defendant under protest the sum of $1,000, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $1,000 on account of an alleged violation by the plaintiff of Section 26 of the Immigration Act of 1924, for having brought to the United States an alien Rocco De Sanctis, alleged to be afflicted with ringworm of the scalp and therefore an inadmissible alien.

Fifty-fifth. Prior to the acceptance of said Rocco De Sanctis as a passenger, the plaintiff caused him to be sub- [fol. 22] jected to, and he was subjected to, competent medical examinations which showed him to be free of any of the disabilities or diseases specified in Section 26 of the Immigration Act of 1924, and plaintiff alleges that the said Rocco De Sanctis was free of any such disabilities or diseases including ringworm of the scalp, or if he was so afflicted the fact could not have been detected by means of a competent medical examination at the time of his embarkation.

Fifty-sixth. This alien was in possession of a transit permit to Canada. He was not coming to the United States as an immigrant, and before the imposition of this fine he was admitted to the United States for transit to Canada.

Fifty-seventh. Notwithstanding the diligence exercised by the plaintiff as aforesaid to ascertain the admissibility of said alien before embarkat-on, and notwithstanding that he was coming to the United States only in transit to Canada and was admitted for that purpose, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the aforesaid fine of $1,000.

Fifty-eighth. The action of the defendant herein in demanding and receiving payment of said sum of $1,000 was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

[fol. 23] Fifty-ninth. Repayment of said sum of $1,000 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its eleventh cause of action for $1,000 with interest and costs and all other appropriate relief.

For Its Twelfth Cause of Action

Sixtieth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Sixty-first. On or about May 7, 1926, the plaintiff paid to the defendant under protest the sum of $1,188, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $1,000 and the payment of a refund of $188 passage money on account of an alleged violation by the plaintiff of Section 26 of the Immigration Act of 1924, for having brought to the United States an alien Leonardo Perazzi, alleged to be feeble-minded and therefore an inadmissible alien.

Sixty-second. Prior to the acceptance of said Leonardo Perazzi by the plaintiff as a passenger, the plaintiff caused him to be subjected to, and he was subjected to, competent medical examinations which showed him to be free of any [fol. 24] of the disabilities or diseases specified in Section 26 of the Immigration Act of 1924, and plaintiff alleges that the said Leonardo Perazzi was free of any such disabilities or diseases including feeblemindedness, or if he was so afflicted the fact could not have been detected by means of a competent medical examination at the time of his embarkation.

Sixty-third. This alien was in possession of a transit permit to Canada, where his father resided, and was accompanied by his mother, and was not coming to the United States as an immigrant.

Sixty-fourth. Notwithstanding the diligence exercised by the plaintiff as aforesaid to ascertain the admissibility of said alien before embarkation, and notwithstanding that he was coming to the United States only in transit to Canada, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily, and without warrant of law imposed the aforesaid fine of $1,000, and directed the return of passage money in the sum of $188.

Sixty-fifth. The action of the defendant herein in demanding and receiving payment of said sum of $1,188 was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

[fol. 25] Sixty-sixth. Repayment of said sum of $1188 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its twelfth cause of action for $1188 with interest and costs and all other appropriate relief.

For Its Thirteenth Cause of Action

Sixty-seventh. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Sixty-eighth. On or about May 26, 1925, the plaintiff paid to the defendant under protest the sum of $467.58, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $250 and the payment of a refund of $217.58 passage money on account of an alleged violation by the plaintiff of Section 26 of the Immigration Act of 1924 for having brought to the United States an alien Salvatore Crimi, alleged to be blind and therefore an inadmissible alien.

Sixty-ninth. This alien was in possession of a non quota immigration visa, duly issued by the American Consul at Naples, which designated him as a non quota alien under Section 4, Paragraph E of the Immigration Act of 1924, [fol. 26] as a student. Notwithstand the blindness of this alien he had been employed as a teacher in the Institute Paolo Colosimo at Naples and was able to earn his living. Before his acceptance as a passenger the plaintiff not only was furnished with his non quota visa but was informed by letters and documentary evidence through the United States Consul at Naples that application had been made in behalf of the alien to the New York Institute for the Education of the Blind for a position in that Institute as a student teacher, and that he probably would be accepted in that capacity. The father of the alien was a citizen of the United States residing in the United States, and he had a brother in Brooklyn, New York, who was amply able to support the alien if necessary and who presented an affidavit to the Board of Special Inquiry at Ellis Island indicating his willingness to do so and guaranteeing against the alien becoming a public charge.

Seventieth. Notwithstanding the diligence exercised by the plaintiff as aforesaid, and notwithstanding the fact that the alien was admissible under Section 4, Paragraph E of the Immigration Act of 1924, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily and without warrant of law imposed the aforesaid fine of $250 and directed the return of passage money in the sum of $217.58.

Seventy-first. The action of the defendant herein in demanding and receiving payment of said sum of $467.58 was [fol. 27] unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Seventy-second. Repayment of said sum of $467.58 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its thirteenth cause of action for $467.58 with interest and costs and all other appropriate relief.

For Its Fourteenth Cause of Action

Seventy-third. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Seventy-fourth. On or about the 29th day of December, 1924, the plaintiff paid to the defendant under protest the sum of $1000, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $1000 on account of an alleged violation by the plaintiff of Section 26 of the Immigration Act of 1924, for having brought to the United States an alien Domenico Costigliolo, alleged to be aff-icted with sycosis barbae and therefore an inadmissible alien.

[fol. 28] Seventy-fifth. Prior to the acceptance of said Domenico Costigliolo as a passenger, the plaintiff caused him to be subjected to, and he was subjected to, competent medical examinations which showed him to be free of any of the disabilities or diseases specified in Section 26 of the Immigration Act of 1924, and plaintiff alleges that the said Domenico Costigliolo was free of any such disabilities or diseases including sycosis barbae, or if he was so afflicted the fact could not have been detected by means of a competent medical examination at the time of his embarkation.

Seventy-sixth. This alien was a bona fide seaman of 13 years' experience, coming to the United States at the ex-

pense of his employer to go aboard an Italian vessel at New York as a member of the crew to take the vessel back to Italy.

Seventy-seventh. Notwithstanding the diligence exercised by the plaintiff as aforesaid to ascertain the admissibility of said alien before embarkation, and notwithstanding the fact that he was coming to the United States for the sole purpose of becoming a member of the crew of an Italian vessel about to sail from the United States, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily and without warrant of law, imposed the aforesaid fine of $1,000.

Seventy-eighth. The action of the defendant herein in demanding and receiving payment of said sum of $1,000 [fol. 29] was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Seventy-ninth. Repayment of said sum of $1000 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its fourteenth cause of action for $1000 with interest and costs and all other appropriate relief.

For Its Fifteenth Cause of Action

Eightieth. It repeats and realleges the allegations contained in paragraphs First and Second of this complaint.

Eighty-first. On or about the 26th day of May, 1925, the plaintiff paid to the defendant under protest the sum of $1212.63, which defendant demanded and received as a condition to granting clearance papers to one of the vessels of the plaintiff about to sail from the port of New York, on the ground that plaintiff was subject to a penalty of $1000 and the payment of a refund of $212.63 passage money on account of an alleged violation by the plaintiff of Section 26 of the Immigration Act of 1924 for having brought to the United States an alien Renzo Nelli, alleged to be an imbecile and therefore an inadmissible alien.

[fol. 30] Eighty-second. This alien was a minor 16 years old, the son of an American citizen residing in the United States. Before embarkation to the United States the father of this alien made application to the Department of Labor for his admission, in the course of which he set forth that the alien was feebleminded and epileptic. The petition was granted by the Labor Department and the Department of State directed the United States Consul at Leghorn to grant a non quota visa, which was done. The aforesaid proceedings were brought to the attention of the plaintiff before said alien was accepted as a passenger, and he was accepted as a passenger on the faith of the directions of the Department of Labor and the Department of State as well as the visa of the American Consul at Leghorn authorizing his admission to the United States under Section 4 A of the Immigration Act of 1924.

Eighty-third. Notwithstanding the diligence exercised by the plaintiff as aforesaid to ascertain the admissibility of said alien before embarkation, and notwithstanding that his admission to the United States as an immigrant had been authorized by proceedings duly taken before his embarkation, evidence of which was duly submitted to the Secretary of Labor, the Secretary of Labor arbitrarily and without warrant of law imposed the aforesaid fine of $1000, and directed the return of passage money in the sum of $212.63.

Eighty-fourth. The action of the defendant herein in demanding and receiving payment of said sum of $1212.63 [fol. 31] was unwarranted in law and was an arbitrary and excessive exercise of his power as Collector of Customs, and by reason thereof the plaintiff was deprived of its property without due process of law.

Eighty-fifth. Repayment of said sum of $1,212.63 has been duly demanded by the plaintiff, but the defendant has neglected and refused to make such payment.

Wherefore plaintiff demands judgment against the defendant on its fifteenth cause of action for $1,212.63 with interest and costs and all other appropriate relief.

Wherefore the plaintiff demands judgment on all its causes of action herein for $8,076.04, with interest on

$282.08 thereof from November 22, 1923; on $496.83 thereof from February 21, 1924; on $283.51 thereof from January 18, 1924; on $285.40 thereof from February 6, 1924; on $281.36 thereof from August 19, 1924; on $283.65 thereof from January 8, 1925; on $200 thereof from June 23, 1923; on $1,095 thereof from February 21, 1927; on $1,000 thereof from February 28, 1927; on $1,188 thereof from May 7, 1926; on $467.58 thereof from May 26, 1925; on $1,000 thereof from December 29, 1924, and on $1,212.63 thereof from May 26, 1925, with costs and all other appropriate relief.

Kirlin, Campbell, Hickox, Keating & McGrann, Office & P. O. address: 27 William Street, Borough of Manhattan, New York City; Gaspare M. Cusu- [fol. 32] mano, Office & P. O. address: 44 Whitehall Street, Borough of Manhattan, New York City, Attorneys for Plaintiff.

Duly sworn to by M. Serrati. Jurat omitted in printing.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER

The defendant, by his attorney, Charles H. Tuttle, United States Attorney, for his answer to the complaint herein, alleges:

1. Admits the allegations contained in paragraphs "Second", "Eighth", "Fourteenth", "Twentieth", "Twenty-sixth", "Thirty-second", "Twenty-eighth" (page 14), "Thirty-fourth", "Fortieth", "Forty-sixth", "Fifty-third", "Sixtieth", "Sixty-seventh", "Seventy-third" and "Eightieth" of the complaint.

As to Plaintiff's Alleged First Cause of Action

2. Admits the allegations contained in paragraphs "Third" and "Seventh" of the complaint.

[fol. 34] 3. Denies the allegations contained in paragraphs "Fourth", "Fifth" and "Sixth" of the complaint.

As to Plaintiff's Alleged Second Cause of Action

4. Admits the allegations contained in paragraphs "Ninth" and "Thirteenth" of the complaint.

5. Denies the allegations contained in paragraphs "Tenth", "Eleventh" and "Twelfth" of the complaint.

As to Plaintiff's Alleged Third Cause of Action

6. Admits the allegations contained in paragraphs "Fifteenth" and "Nineteenth" of the complaint.

7. Denies the allegations contained in paragraphs "Sixteenth", "Seventeenth" and "Eighteenth" of the complaint.

As to Plaintiff's Alleged Fourth Cause of Action

8. Admits the allegations contained in paragraphs "Twenty-first" and "Twenty-fifth" of the complaint.

9. Denies the allegations contained in paragraphs "Twenty-second", "Twenty-third" and "Twenty-fourth" of the complaint.

[fol. 35] As to Plaintiff's Alleged Fifth Cause of Action

10. Admits the allegations contained in paragraphs "Twenty-seventh" and "Thirty-first" of the complaint.

11. Denies the allegations contained in paragraphs "Twenty-eighth", "Twenty-ninth" — "Thirtieth" of the complaint.

As to Plaintiff's Alleged Sixth Cause of Action

12. Admits the allegations contained in paragraphs "Thirty-third" and "Twenty-seventh" (page 13) of the complaint.

13. Denies the allegations contained in paragraphs "Twenty-fourth", "Twenty-fifth" and "Twenty-sixth" of the complaint.

As to Plaintiff's Alleged Seventh Cause of Action

14. Admits the allegations contained in paragraphs "Twenty-ninth" and "Thirty-third" of the complaint.

15. Denies the allegations contained in paragraphs "Thirtieth", "Thirty-first" and "Thirty-second" of the complaint.

As to Plaintiff's Alleged Eighth Cause of Action

16. Admits the allegations contained in paragraphs "Thirty-fifth" and "Thirty-ninth" of the complaint.

[fol. 36] 17. Denies the allegations contained in paragraphs "Thirty-sixth", "Thirty-seventh" and "Thirty-eighth" of the complaint.

As to Plaintiff's Alleged Ninth Cause of Action

18. Admits the allegations contained in paragraphs "Forty-first" and "Forty-fifth" of the complaint.

19. Denies the allegations contained in paragraphs "Forty-second", "Forty-third" and "Forty-fourth" of the complaint.

As to Plaintiff's Alleged Tenth Cause of Action

20. Admits the allegations contained in paragraphs "Forty-seventh" and "Fifty-second" of the complaint.

21. Denies the allegations contained in paragraphs "Forty-eighth", "Forty-ninth", "Fiftieth" and "Fifty-first" of the complaint.

As to Plaintiff's Alleged Eleventh Cause of Action

22. Admits the allegations contained in paragraphs "Fifty-fourth" and "Fifty-ninth" of the complaint.

23. Denies the allegations contained in paragraphs "Fifty-fifth", "Fifty-sixth" and "Fifty-seventh" of the complaint except the allegation contained in paragraph "Fifty-sixth": "This alien was in possession of a transit [fol. 37] permit to Canada, he was not coming to the United States as an immigrant * * *".

As to Plaintiff's Alleged Twelfth Cause of Action

24. Admits the allegations contained in paragraphs "Sixty-first" and "Sixty-sixth" of the complaint.

25. Denies the allegations contained in paragraphs "Sixty-second", "Sixty-third", "Sixty-fourth" and "Sixty-Fifth" of the complaint except the allegation contained in paragraph "Sixty-third": "This alien was in possession of a transit permit to Canada where his father resided, and was accompanied by his mother * * *".

As to Plaintiff's Alleged Thirteenth Cause of Action

26. Admits the allegations contained in paragraphs "Sixty-eighth" and "Seventy-second" of the complaint.

27. Denies the allegations contained in paragraphs "Sixty-ninth", "Seventieth", "Seventy-first" and "Seventy-second" of the complaint.

As to Plaintiff's Alleged Fourteenth Cause of Action

28. Admits the allegations contained in paragraphs "Seventy-fourth", "Seventy-sixth" and "Seventy-ninth" of the complaint.

[fol. 38] 29. Denies the allegations contained in paragraphs "Seventy-fifth", "Seventy-seventh" and "Seventy-eighth" of the complaint.

As to Plaintiff's Alleged Fifteenth Cause of Action

30. Admits the allegations contained in paragraphs "Eighty-first" and "Eighty-fifth" of the complaint.

31. Denies the allegations contained in paragraphs "Eighty-second", "Eighty-third" and "Eighty-fourth" of the complaint.

As a Complete, Separate and Distinct Defense to the Plaintiff's Alleged Causes of Action

32. The various sums of money alleged by plaintiff to have been paid by it to the defendant were received by the defendant pursuant to law.

33. On information and belief that the various aliens alleged in plaintiff's fifteen causes of action were excluded by the Secretary of Labor pursuant to law, after it had appeared to the satisfaction of said Secretary of Labor that said aliens were excludable.

34. On information and belief that various disabilities and diseases possessed by said aliens which rendered them excludable and/or the plaintiff subject to fine by virtue thereof, were determined to the satisfaction of the Secre-
[fol. 39] tary of Labor to have been such as might have been detected by the exercise of reasonable precaution and competent examination prior to the departure of the said aliens from foreign ports.

35. That the various sums of money alleged by the plaintiff in its fifteen causes of action to have been paid to the defendant were delivered to the said aliens and/or covered into the treasury of the United States pursuant to law by the defendant.

36. That defendant is not personally liable for any sum of money which has heretofore been paid by the plaintiff to him as alleged in the plaintiff's fifteen causes of action herein, but that the plaintiff's cause of action for recovery, if any, is against the United States of America and not against the defendant.

Wherefore defendant demands judgment dismissing the complaint together with the costs and disbursements of this action.

Charles H. Tuttle, United States Attorney, Southern District of New York, Attorney for Defendant. Office & P. O. address: U. S. Courts & P. O. Bldg., B'way & Park Row, Borough of Manhattan, City of New York.

[fol. 40] *Duly sworn to by Philip Elting. Jurat omitted in printing.*

[fol. 41] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L. 45/117

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI, Plaintiff,

against

PHILIP ELTING, Collector of Customs of the Port of New York, Defendant

JUDGMENT

The issues in the above entitled cause having regularly come on to be heard before Honorable Robert P. Patterson, and the parties having stipulated that the above cause be tried by a jury of one, and the Court after hearing the proofs adduced by the respective parties and having directed a verdict in favor of the plaintiff on the causes of action numbered Ninth, Eleventh and Fifteenth set forth in the complaint in the sum of $2412.63, plus interest on the sum of $200 from June 23, 1923, on the sum of $1000 from February 28, 1927, and on the sum of $1,212.63 from May 26, 1925; and having directed a verdict for the defendant as to causes of action numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14, and accordingly the jury having returned a verdict for the plaintiff in the sum of $2,412.63, plus interest as directed by this Court,

It is, therefore,

[fol. 42] Ordered and Adjudged that the complaint be and it hereby is dismissed as to causes of action numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14, and it is further

Ordered and Adjudged that the plaintiff, Lloyd Sabaudo Societa Anonima Per Azioni, recover of and from the defendant, Philip Elting, Collector of Customs of the Port of New York, the sum of $200, with interest from June 23, 1923 amounting to $92.42; the sum of $1,000, with interest thereon from February 28, 1927 amounting to $240.99; and the sum of $1,212.63 with interest thereon from May 26, 1925 amounting to $400.41, amounting in all to the sum of

$3,146.45, and that it have judgment and execution therefor.

Judgment this 6th day of March, 1931.

Charles Weiser, Clerk.

[fol. 43] In United States District Court, Southern District of New York

Lloyd Sabaudo Societa Anonima per Azioni, Plaintiff,

against

Philip Elting, Collector of Customs of the Port of New York, Defendant

Bill of Exceptions

Before Hon. Robert P. Patterson, J., and a Jury of One

New York, June 12, 1930—4.30 p. m.

Appearances

Messrs. Kirlin, Campbell, Hickox, Keating & McGrann for the Plaintiff; D. M. Tibbetts, Esq., of Counsel.

Charles H. Tuttle, Esq., United States Attorney, for the Defendant, by W. H. Schulman, Esq., Assistant U. S. Attorney.

[fol. 44] Stipulation as to Trial

Mr. Tibbetts: It is stipulated and agreed that the case may be tried with a jury of one?

Mr. Schulman: Yes.

(Whereupon, a jury of one was empaneled and sworn.)

Dr. Giovanni Valenzi, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Tibbetts:

Mr. Schulman: Before we proceed, your Honor, I would like to call the attention of the Court to the fact that there

has been a similar case tried before Judge Coleman about three weeks ago.

The Court: The same parties?

Mr. Schulman: No, your Honor; another plaintiff, but it was a steamship line case, and the identical question was there involved. The plaintiff had taken depositions abroad, and offered them in evidence before Judge Coleman, to all of which the Government objected on the ground that in a suit in this Court they could not introduce anything that was not introduced before the Secretary of Labor. Judge Coleman reserved decision on that objection.

Now, with that statement, there is no objection on my part to proceeding here.

[fol. 45] Q. What is your residence, Doctor? Where is your residence?

A. My residence is in Italy, Genoa.

Q. What is your occupation or profession?

A. Doctor of Medicine and Surgery.

Q. Are you in the employ of the Lloyd Sabaudo Steamship Company, at this time?

A. I am.

Q. How long have you been with the Lloyd Sabaudo Steamship Company, in that capacity?

A. Since January, 1921.

Q. January, 1921?

A. Yes.

Q. Do you have a degree as a Doctor of Medicine and Surgery?

A. Yes.

Q. Where did you take your course to obtain that degree?

A. At the University of Turin.

Q. In Italy?

A. In Italy, the 6th of July, 1911.

Q. And how many years' course of study did you pursue?

A. Six; and then I took some post-graduate courses.

Q. Have you engaged in private practice since your graduation?

A. Yes, I was.

Q. For how long a time and where?

A. Before the war, in 1911, 1912 and 1913, and the first months of 1915, until May, in Turin.

Q. Were you in the army or navy during the war?

A. I was in the army, as a medical officer. I had the degree or rank of Captain.

Q. When were you discharged from the army?

A. In November, 1919.

Q. I believe you stated that you went with the Lloyd Sabaudo Steamship Company, in 1921?

A. Yes. I was with the Italian Transatlantic Company, for one voyage in the end of 1920. I was here for the first [fol. 46] time on the Steamship "Giuseppi Verdi" in December, 1920.

Q. Was any special examination required before you could qualify as a ship's surgeon?

A. Yes, in Rome.

Q. When did you take that?

A. In 1920. I went twice to Rome, in the spring and in the autumn to pass my examinations.

Q. In a general way what was the nature of that examination?

A. Well, we had to—I had to undergo three examinations; one written examination, and one oral examination, and one practical examination—laboratory work.

Q. How many physicians took that examination at the time you did?

A. About 170 or 180, I think.

Q. And how many of those who took the examination passed it?

A. I think 78 passed.

Q. Would you characterize it as a rigid examination or otherwise?

A. What is that?

Q. I say, would you characterize that examination as a rigid one?

A. Rather rigid, yes, it was. We were in one room, like this, and we had to do our written examination, and after we passed the written examination, without any books or communication with anybody, we had the practical examination and oral examination, but always separated, where we could not communicate with anybody, and we could not know the cases they showed us.

Q. In that examination were you examined with reference to diagnosis or discovery of infectious and contagious diseases?

A. Yes; I know that our examinations were particularly devoted to infectious and contagious diseases, also regard-
[fol. 47] ing etiology and prophylaxis, and laboratory work, connected with all infectious diseases, macro and micro-parasitic diseases—"infectious diseases" is better, I think—a better term.

Q. Have you been continuously engaged in the capacity of a ship's surgeon with the Lloyd Sabaudo Lines since you joined that company in 1921?

A. Yes, since January, 1921, up to now, with only an intermission of a month in June, 1924, and in August, 1925.

Q. How many trips have you made to the United States during that service?

A. Up to now?

Q. Yes.

A. 73, always in the immigration service, and 7 to South America. That makes 80 trips.

Q. What ships have you served on during the period from 1921 to the present time?

A. On the steamship "Regina d' Italia" and the "Conte Rosso" and the "Conte Biancamano".

Q. In what capacity did you serve on the "Conte Rosso"?

A. As chief doctor.

Q. During what years?

A. 1922, 1923 and 1924, up to November—to October, 1925.

Q. And have you been on the "Conte Biancamano"?

A. Yes.

Q. Since that time?

A. Yes, since November, 1925.

Q. Doctor, are immigrant passengers sailing on the ships of the Lloyd Sabaudo Line from Italy to the United States subjected to any medical examination?

A. Yes.

Q. Before their departure?

[fol. 48] Mr. Schulman: I object to the question, and to any testimony by the witness along this line, on the ground that in order to deterimne whether the fines involved in this case were improperly imposed or not, the Court may consider only the administrative records, and all evidence in those records which was before the Secretary of Labor,

who imposed these fines; and that any evidence which was not presented to the Secretary of Labor within the time which was given to the plaintiff to present all the evidence that it desired to present, can not at this time be presented in order to make out a cause of action.

The Court: Is this just a review of the action of the Secretary of Labor?

Mr. Tibbetts: It is, in a sense, yes. We allege that the action of the Secretary was arbitrary in imposing these fines, and if we establish that, I think there is no question about the admissibility of testimony outside of that before the Secretary. I have a number of decisions which I can cite on the subject.

(Informal discussion, off the record.)

The Court: I will overrule the objection at this time, and you may renew it later.

Mr. Schulman: Very well. That will be satisfactory.

The Court: We will take the testimony now.

Mr. Schulman: Yes.

Mr. Tibbetts: That is quite satisfactory.

[fol. 49] Q. Now, I believe the last answer was that they did conduct medical examinations?

The Court: Yes, whether passengers were carefully examined physically before you accepted them as passengers?

The Witness: Yes.

Mr. Schulman: I also object to the form of the question as leading and suggestive.

The Court: Doctor, what do you do in the way of examining the physical condition of passengers? Do you do anything?

The Witness: Before they get on the boat?

The Court: Yes.

The Witness: In Italy?

The Court: Yes.

The Witness: We do, in Italy, of course, a proper examination of all prospective immigrants, because our law is very clear on that matter, and we know also that we have to work according to the Immigration Laws of America—of the United States, and all regulations and amendments, and we have, of course, to carry on those examinations in the way that our laws and your laws prescribe.

Q. Doctor, did you familiarize yourself with the requirements of the American Immigration Laws with relation to physical tests and examinations for defects or disabilities, I should say, which might bar them from admission to the United States at the time you began your service?

A. Yes.

[fol. 50] Mr. Schulman: I object to that as leading.

The Court: I will permit it.

Mr. Schulman: Exception.

Q. You say you did?

A. Yes.

Mr. Tibbetts: Will you read the question?

(Question read.)

The Witness: Yes, I did.

Q. Now, Doctor, will you tell us what examinations were made, and I mean during the period from 1922 up to 1928, inclusive, before passengers were allowed to embark on vessels of the Lloyd Sabaudo Line for the United States?

A. Yes, we did examinations. The prospective immigrants on the days preceding immigration, and at the very day of embarkation, were examined.

Q. Do you know whether any physical examinations were made of quota immigrants before they obtained their passports in Italy?

A. Yes, a prospective immigrant had to produce a medical certificate from his town or place of origin, and that medical certificate had to be regularized from the authorities of that city or place.

Q. Before American doctors went to Italy to be attached to the Consulates there, were any examinations of prospective quota immigrants made by Government doctors?

A. Yes.

Q. What do you call such a doctor?

A. We call them "officers of immigration". We called them at that time "commissioners of immigration", medical officers in connection with our examination.

[fol. 51] Q. Do you mean that a medical officer attached to the Italian Department of Immigration made the examina-

tions of quota immigrants before their passports were granted?

A. Before and after, certainly they had an examination.

Q. That is, they had an examination before you examined them, is that right?

Mr. Schulman: I object to that question as leading.

The Witness: I can not remember that.

Mr. Schulman: Exception.

The Witness: I know we were working at the same time, because the medical officer of the Government superintended our examination, and we asked his advice in doubtful cases, and also he examined the immigrants.

Q. You have spoken of an examination the day before the departure of the ship?

A. Yes.

Q. Where was that examination or where were those examinations held?

A. The examinations were held in a building near the pier—not so far from the pier, where the immigrants were taken in groups for examination.

Q. Who made the examinations at that place?

A. The Company sent the doctors,—the ship's doctors, and the Company sent also, of course, the inspector doctor of the company.

Q. Which one of the ship's doctors usually made such examinations?

A. Usually the one of second rank, who is also a doctor authorized by the Government.

Q Who was the second in rank serving on board the [fol. 52] Steamship "Conte Rosso" while you were in the service there?

A. When?

Q. In 1922, 1923 and 1924.

A. Dr. Dandini De Silva.

Q. Were examinations conducted at any other place—I am speaking now of your own cases—at any other place the day before departure?

A. Also at the company's office, in the doctor's office.

Q. Who conducted the examinations at the company's office?

A. I did.

Q. You did?

A. Yes.

Q. What class of passengers did you examine?

A. Usually I examined the second class at the company's office, and on the day of embarkation I examined everybody.

Q. Then, what class of passengers were principally examined at this special building that you mention?

A. Third class; prospective immigrants.

Q. Have you made examinations at that place yourself?

A. Yes, sometimes. I used to go there also often to see how things were going in connection with the work, because it was my duty and my interest to see if my colleagues had all the proper supplies and materials connected with the work.

Q. Now, please explain rather comprehensively, but not too much in detail, the examinations which were made by you at the company's office.

A. The prospective immigrant was taken into a room, and they were of course divided the men from the women, and we examined them entirely stripped, and particularly with the purpose of detecting any infectious or loathsome or dangerous disease, or physical or mental defect, which [fol. 53] might debar the prospective immigrant from the States, following all the details of course—and that includes the proper lighting of the room, and all the steps necessary to detect possible diseases or defects.

Q. Now, Doctor, describe briefly what sort of examination would be given to determine whether a given person was afflicted with an abnormal systemic condition?

A. That means conditions of possible syphilis. Then we examined, of course, all the body, the color of the skin, the mucus membranes, the glandular system, the natural orifices or openings of the body—I mean the mouth and ears and genito-urinary parts, the meatus and anus.

Q. What would you do to discover whether or not valvular disease of the heart was present?

A. My attention was given first to all the general conditions of a prospective immigrant. If he had any particular difficulty in breathing or any particular alteration in color of the lips or the nose, or was particularly pale, or if he had palpitation of his chest—I mean, the cardiac area, and

in carrying on the examination, of course, the pulse was examined to see if there were any signs which might suggest a cardiac lesion, and, therefore, I examined the cardiac area. Usually I have a stethoscope, such as you use in the States—the bell-shape and the diaphragm-shaped also—the flat one.

Q. What did you do in examination for trachoma?

A. For trachoma we give the aversion of both eye-lids and I inspected carefully the conjunctiva, regarding its [fol. 54] brightness, whether it was smooth or not, and after the conjunctiva, the cornea, to see if there was any sign of alteration. If there were any granulations on the conjunctiva or any opacity of the cornea, if there was any discharge or even a small suspicious spot in the very deep conjunctival recesses—in one word, all the conditions which might show an inflammation, acute or sub-acute or chronic.

Q. Now, will you describe briefly the examination which you made to detect the presence of ringworm of the nails?

Mr. Schulman: I ask that the questions be clarified. In other words, when counsel says "you", does he mean the witness or the company's doctors, as a group?

Mr. Tibbetts: I have localized it to his own examination.

The Witness: Ringworm of the nails?

Q. Yes.

A. All the hands were carefully examined, not only to see whether there was any mutilation or alteration in the skin, and so forth, but also with regard to the condition of the nails. If there was any suspicious scar or malnutrition of the nails, because very often in immigrants we can find scars, in the cases of laborers, who get scars many times, but not every scar is suspicious or an indication of infectious disease of the nails. I looked particularly to see if the nails were thickened, if there was any change in the color of the nail, in the nutrition of the nail, in the consistency of the nail, if it was more or less elastic, and if it was possible to—if there was any friability of the tissue, or any [fol. 55] infiltration of the root of the nail.

Q. What did you do to discover the presence of tuberculosis?

A. First of all, the general appearance of the prospective immigrant was very well examined,—particularly the

chest. Of course, we pay attention too to the skin, because a special condition of tuberculosis in the skin is also a cause of rejection.

The Court: I shall have to stop now, gentlemen. Come back at ten o'clock tomorrow morning.

Mr. Tibbetts: Yes.

The Court: And then I will hear you for another half hour.

(Whereupon an adjournment was taken until Friday, June 13, 1930, at 10.00 o'clock a. m.)

New York, June 13, 1930.

Trial resumed.

Dr. Giovanni Valenzi resumes the stand.

Direct examination resumed.

By Mr. Tibbetts:

Mr. Tibbetts: After waiting nineteen minutes for Mr. Schulman, further examination of the witness continues after having sent notice to the United States District Attorney's office.

[fol. 56] Q. Doctor, will you state what was done in order to detect whether ringworm of the scalp was present in the examinations you have been describing?

A. Prospective immigrants came into the room with their hair cut, so it was easy to inspect all the scalp, in order to detect if there was any suspicious area of alteration in the color of the skin; if there was any loss of hair or disease of the hair. I mean infiltration in the hair follicles, if there was any appearance of suspicious patches or scales.

So I did with the women that came also with hair washed, so I inspected all the scalps.

Q. What was done in these examinations in order to detect whether or not a person was feeble-minded?

A. First of all the people appeared before me, and how alert they were and how quick they were in answering my questions, a few simple questions, if they showed any particular gaits or, in one word, I tried in my brief examination

—I mean questioning them of the business they were attending to and — what they intended to go and to do; if they answered properly easy questions of arithmetic.

Q. Was it very difficult, Doctor, to determine whether a person was feeble-minded or not?

A. There is a certain extent at which you can say if a person has sufficient mental fitness.

Q. In other words, is it difficult, that doctors might disagree as to the extent; different doctors might disagree upon feeble-mindedness in some cases?

A. I do not think so. First, in really suspicious cases I was postponing those things to the company, and those [fol. 57] doubtful cases, if the answers were not satisfactory, if I could have in my mind any suspicion that the prospective immigrant was idiotic or imbecile or feeble-minded or mentally defective, I used to postpone the case and propose the company to give a more careful examination.

Q. What did you do about ascertaining the presence of psychosis barbae, a condition of the skin?

A. I was inspecting the condition of the skin, of the face and the neck. Also the skin of the upper lip, in order to detect if there were any suspicious areas of involvements, or infection is established, or infection already established. I inspected the appearance of the hair follicles, and above all, if there was any area of scales.

Q. Do you mean skin inflammation?

A. Or any loss of epidermic strata.

Q. Doctor, were those examinations which you have been describing peculiar to your own case?

A. For all cases.

Q. Was it a routine matter for all doctors to follow?

A. Yes, sir.

Q. What was done in case an examination left the doctor in doubt as to whether or not the prospective immigrant had a disease which might bar his admission to the United States? A. If there was a suspicion of non-fitness of the immigrant?

Q. Yes.

A. So then I used a little annotation in the special card, Schaeda sanitary.

Q. What was done with the card?

A. I put the notations of these suspicious cases, and another examination was made at the date of embarkation at

[fol. 58] the pier. This examination was given from a special commission, Government commission, composed of the president of the Royal Investigation of Immigration, assisted by his expert, who was generally a Navy doctor from the Royal Navy, and after the port doctor, after the secretary, the port officer, and the Royal Commissioner on board, who was always a doctor in those days, a doctor from the Royal Navy. This Commission used to examine carefully these suspicious cases.

Q. What was done as a result of examination at the pier of the suspicious cases? In other words, if they found a disease existing, what was done with the immigrant?

A. If a disease existed, the immigrant was refused and sent back, back for further details regarding his returning home.

Q. Did you take part in the examination at the pier, also?

A. Always. Always I was in this commission.

The Court: I suggest that you arrange to take his deposition by stipulation.

(Informal discussion, off the record.)

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

Deposition Taken on Behalf of the Plaintiff at the Office of Messrs. Kirlin, Campbell, Hickox, Keating & McGrann, No. 27 William St., New York City, June 13, 1930

Appearances:

Messrs. Kirlin, Campbell, Hickox, Keating & McGrann (D. M. Tibbetts, Esq., and Gaspare M. Cusumano, Esq., of Counsel) for the Plaintiff.

Charles H. Tuttle, Esq., United Sattes Attorney (Walter H. Schulman, Esq.), for the Defendant.

STIPULATION AS TO DEPOSITIONS

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived.

[fol. 60] Mr. Tibbetts: It is stipulated and agreed between counsel that the evidence of Dr. Valenzi, which is about to be taken, is a continuation of his testimony which was commenced before the Court on June 11, 1930, and the taking of the further testimony by deposition is at the suggestion of the Court and pursuant to agreement of counsel.

Dr. Giovanni Valenzi, being duly sworn and examined as a witness for plaintiff, testified as follows:

Direct examination.

By Mr. Tibbetts:

Q. This case involves an action for the recovery of certain immigration fines, including, among others, fines imposed on account of bringing to the United States Eugenio Sbragia, Giuseppe Cecconi and Pasquale Giustino, all on the steamship Conte Rosso, sailing, respectively, August 24, 1923; September 28, 1923; March 31, 1924. Will you please state whether or not you were the ship's surgeon on board the Conte Rosso at those times?

A. I was.

Q. Can you state whether or not the three aliens I have mentioned were examined before embarkation?

A. They have been necessarily examined, because everybody had to be examined by the doctor.

Mr. Schulman: Before we go any further, I think we [fol. 61] ought to incorporate in the stipulation that all objections as to materiality, relevancy, etc., are reserved for the Court and the only objection to be made is to form of question.

Mr. Tibbetts: That's all right.

Q. Did you personally take part in the examination of passengers for those voyages?

A. I did.

Q. At what places—at what sailing ports I mean?

A. In Genoa and Naples.

Q. Did you make any notations of a private character, at or about the time, regarding these voyages?

A. Yes, I always used to write my records for the company and take some of the annotations also for myself.

Q. Have you with you your annotations that you made at that time?

A. Yes, I have.

Q. I will ask you to take those annotations, if necessary, to refresh your recollection, as we will want to ask you some questions about the voyages. Referring first to the case of Eugenio Sbragia, sailing from Genoa on the Conte Rosso August 24, 1923, please state when the sanitary preparations for the voyage began, if you can.

A. They began the 9th with the fumigation of the ship, all the sanitary preparation—you mean the case of Sbragia—Genoa—the 9th?

Mr. Tibbetts: In giving the sailing dates in a previous question, I find that I have given the dates of arrival instead of the dates of sailing.

[fol. 62] A. (Continuing:) The date of sailing was 12th August from Genoa.

Q. In my last question, Doctor, I refer to the voyage on which the Conte Rosso arrived in New York August 24th. What was the sailing date from Genoa of that voyage?

A. The 12th of August.

Q. 1923?

A. 1923.

Q. Then when did your sanitary preparations begin?

A. The sanitary preparations began the 9th, with the general fumigation of the ship.

Q. Do you have a notation of the date of the first medical examination by ship's doctors?

A. The 11th of August, 8 a. m.

Q. Do you mean beginning at 8 a. m.?

A. Yes, 8 o'clock in the morning.

Q. Where were those examinations conducted?

A. In the buildings near the boat—near the pier. We call that the immigration house.

Q. And there were examinations at the company's office also?

A. And also at the Company office. I was referring to the immigrants, third class, at the immigrant house, and second class passengers and the immigrants too, because also in second class you may have immigrants, in the Lloyd Sabaudo's office.

Q. Were any immigrants rejected from sailing as the result of those examinations at Genoa?

A. Yes, as a result of our examinations—in saying "our" I mean myself, Dr. Pietro Dandini and Dr. Livio Amadori —all from the company and ship's doctors——

Q. How many rejections were made and for what reasons?

A. Six from Genoa, for—one for ringworm of nails, three [fol. 63] for trachoma, one suspicious case of trachoma, one with deep scars at his left hip with deep adhesions with one missing testicle.

Q. Was there any examination at the pier on the occasion of that sailing?

A. Yes, we examined all the passengers and the commission just decided to reject these six persons.

Q. What date did the ship arrive at Naples?

A. The 13th.

Q. Was any examination made of any of the passengers at that port?

A. The medical examination had been held before at the immigrant house, as far as I know, and we examined personally the immigrants since 8.30 a. m. on that very day, 13th, till 9 p. m.

Q. Were any immigrant passengers rejected at Naples?

A. Yes. We—I mean the commission—rejected 28.

Q. Will you state, by grouping them, for what reasons and how many were rejected?

A. 14 cases of trachoma—also suspicious cases of trachoma, 2 ringworms of nails, 2 ringworms of scalp—I may say better 2 favus, 5 physically defective, 4 hernias, one paralysis of radial nerve.

Q. Referring now to the sailing on which the Conte Rosso arrived at New York September 28, 1923, carrying Giuseppe Cecconi, what was the sailing date of that voyage from Genoa?

A. Was the 16th of September.

Q. When did your sanitary preparations for that voyage begin?

A. The 13th, with general fumigations.

Q. When were the medical examinations held at Genoa?

A. The 15th and the 16th—the 15th at the immigrant [fol. 64] house and at Lloyd Sabaudo's office, and the 16th at the pier prior to embarkation.

Q. Were there any rejections at Genoa on that occasion? If so, how many?

A. 7 from Genoa; 4 trachomas, 2 hernias, 1 alcoholic tremor.

Q. When did the vessel arrive at Naples?

A. At Naples on the 17th, early in the morning.

Q. Were any medical examinations held there on the day of arrival?

A. We did—Dr. Dandini and myself—we started at 8.30 in the morning—a. m.—and finished late in the afternoon.

Q. Was the usual commission present?

A. The usual commission was there and we had also rejections. The commission decided to reject people also.

Q. How many rejections were made at Naples and for what reasons?

A. 17—3 mutilations of the hands, 2 trachomas, one feverish case, one favus, 6 hernias, 2 venereal diseases, one infantilism—this means underdevelopment—and one stiff knee suspicious of being tubercular.

Mr. Schulman: What was the date of that, Mr. Tibbetts?

The Witness: The date was the 17th.

Mr. Schulman: I mean what year?

The Witness: 1923.

Mr. Schulman: That's the Conte Rosso, too?

The Witness: That's Conte Rosso, yes.

Q. On the voyage of the Conte Rosso arriving at New York March 31, 1924, what was the sailing date from [fol. 65] Genoa?

A. Sailing date from Genoa was the——

Q. (Continuing:) This refers to the case of Pasquale Giustino.

A. (Continuing:) The 18th of March; 19th from Naples.

Q. What date did you begin sanitary preparation for that voyage?

A. The 16th.

Q. By fumigation of the ship?

A. All fumigations and so on, fumigations, supervision of all medical supplies, serums, vaccines, all those things and general medicines and so on.

Q. On what date were the medical examinations of prospective immigrants made, and where?

A. The 17th, 8 o'clock in the morning, and the 18th, 8 o'clock in the morning, at the pier.

Q. Where were the examinations on the 17th held?

A. At the immigrant house and at the Lloyd Sabaudo's office.

Q. Were any rejections of prospective immigrants made as the result of those examinations?

A. The commission on the 18th, rejected 2 suspicious cases of trachoma and——

Q. Was that all in Genoa?

A. In Genoa.

Q. When did the vessel arrive at Naples?

A. Arrived at Naples the 19th, early in the morning.

Q. Were there any medical examinations conducted there?

A. The medical examination was at 9.30 in the morning until 9 p. m.

Q. At the pier?

A. At the pier, prior to embarkation.

Q. Were any rejections of prospective immigrants made at Naples? If so, how many?

A. 20 immigrants—16 cases of trachoma—also suspi- [fol. 66] cious trachoma, one case of blindness, 2 hernias and one suspicious case of mental disease.

Q. Were these rejections which you have referred to rejections of immigrant passengers?

A. All immigrants.

Q. Were you on board the Conte Rosso as ship's surgeon during 1926?

A. I was on board the Conte Biancamano.

Q. Did you personally take part in the examinations of immigrants on the three occasions I have just inquired about?

A. I did personally.

Q. State whether or not you have found from experience diseases sometimes occur en route?

A. Yes. For instance, I notice that the conditions which follow a long sea trip—ocean trip—may revive some latent diseases in some persons.

Q. Is it usual or otherwise to find that diseases have developed during the course of the voyage?

A. This is usual—rather usual.

Q. Did you know the other doctors who served on the Conte Rosso during the time you served on board?

A. I mentioned Dr. Dandini DeSilvia—yes, Dr. Dandini DeSilva and Dr. Livio Amadori for that trip I mentioned, for the trip on which we arrived the 24th of August, 1923.

Q. What other vessel or vessels customarily came to the United States with passengers for the Lloyd Sabaudo during the period you have mentioned?

A. The Conte Verde.

Q. Were you acquainted with the doctors who were serving on board that vessel?

A. I was, Dr. Bernardi.

Q. Will you state whether or not in your opinion the ship doctors who were serving on board the vessels of [fol. 67] Lloyd Sabaudo on voyages to the United States were competent medical doctors and qualified in their profession?

A. They were all competent doctors and qualified and they all had our ministerial—we say ministerial licenses, I would say license from the—special license to be ship's doctor. We say in Italian "all 'autorizzazione' " given by the Minister of the Interior.

Q. Did all doctors who wanted to become ship's doctors have to take the special examination which you have mentioned and which you testified about yesterday?

A. Yes.

Q. Please state whether or not, in your opinion, the examinations which were conducted of the immigrant passengers before embarkation were of such character and thoroughness that they resulted in the discovery of diseases or possibilities which might bar the persons from entry to the United States if the diseases had existed in discoverable form at that time.

Mr. Schulman: I object to the form of the question.

A. In my opinion they were.

Q. You have now referred to the examinations which were made by the doctors employed by the steamship company. Can you state whether or not any previous examination was made by doctors in government service of quota immigrants?

A. Yes, as far as I remember, in those years the prospective immigrants had to be visited also——

Q. Examined?

A. (Continuing:) Examined also from the government medical officers on duty in the Regio Ispettorato d'Emigrazione.

[fol. 68] Cross-examination.

By Mr. Schulman:

Q. Now, Doctor, when you speak of quota immigrants, do you use that expression with respect to emigrants from Italy to the United States?

A. Yes.

Q. Am I correct in understanding that at Genoa you personally only made examinations of the second class passengers?

A. I did the examination of second class and third class passengers.

Q. All second class and third class?

A. All second class and third class passengers.

Q. I understood you to say yesterday that it was just the second class passengers?

A. The second class passengers, the day before embarkation; and third class and second class passengers the day of sailing.

Q. I see; then the second class passengers were examined by you——

A. By me.

Q. (Continuing:) The day of sailing, and third class passengers were examined the day before sailing, is that correct?

A. The day before sailing——

Q. Third class passengers were examined?

A. Third and second class passengers, too—the day before sailing, and everybody at the day of sailing.

Q. Well, then, both classes were examined the day before sailing and also——

A. Yes.

Q. Did you personally examine both those classes of passengers?

A. Yes, I did.

Q. Before the sailing?

A. Yes, they came all in line, second class or third class—usually we did the third class before. We started the day

[fol. 69] of sailing 8 a. m. in the morning with the third class and after the second class, separately.

Q. Did you personally examine every third class passenger who was embarking at Genoa?

—. Every third class passenger who was embarking at Genoa was examined.

Q. By you?

A. By me at the pier before the embarkation—prior to embarkation.

Q. Now, when the examinations were made the day before sailing, it's a fact, isn't it, that those examinations were made at what was called the immigrant house?

A. The immigrant house.

Q. Now, at the immigrant house, did you personally examine each passenger that was going to embark on your company's boat at Genoa?

A. No; my colleague, the second in rank, usually did that examination. Occasionally myself, if the company send me on duty there.

Q. But the ordinary practice, if I understand you, was that the ship's surgeon attached to the boat that was sailing from Genoa at the time, who was second in rank, conducted the examination at the immigrant house?

A. Yes, he did, under the supervision of our chief doctor there and with my assistance too, if he needed something, in doubtful cases.

Q. The examination in which you personally examined every passenger was then made at the pier, if I understand you, is that right?

A. Yes.

Q. How long was spent in examining each passenger at the immigrant house—how much time was——

A. How much time?

Q. Yes, was given to the examination.

A. Well, that cannot be stated by a watch in your hand, [fol. 70] but usually I think that in a general routine the examinations took from three—four minutes up to ten—twenty maybe.

Q. Will you explain the difference in time—that is, the minimum which you have given of three or four minutes, and the maximum of twenty minutes—how that comes to be.

A. Yes, I have in my mind the way we carried our examinations. It is easy to examine a person entirely stripped in a few minutes, if he hasn't any physical defects or he doesn't show any symptoms of disease. I mean that a good, healthy person is easily visible.

Q. Examined you mean?

A. Examined—excuse me.

Q. Well, then, if I understand you, it would ordinarily take only from three to four minutes at the immigrant house to determine whether a particular passenger was in good condition for——

A. I told you up to ten—twelve minutes.

Q. Yes, I mean for three or four minutes—you didn't let me finish the question—only three or four minutes to determine, as a rule, whether he was in good physical condition to go to the United States. Now, will you describe the kind of examination which was given in that three or four-minute period, so that the determination could be made that he was in good physical condition and mental condition also.

A. Yes, I am referring now to the examinations in that building that we call immigrant house.

Q. That's right.

A. Usually women and men were divided—not usually, always men and women were divided in group. They took [fol. 71] previously bath and showers. They had hair-cutting and the personal effects disinfected previously to appear to the doctors. After, in small groups of seven—ten, they enter in the room where the medical examination was held. The doctor stood in a good light with windows back of his shoulders. The prospective immigrants were examined one by one, entirely stripped, walking few steps—six—seven steps before arriving in the presence of the doctor. Then, we could detect if there was any defect in the ambulation or if there was any particular gait or something like that, and in the countenance—in the appearance and countenance; then we started to examine the head, scalp, eyes—may I go into details?

Q. Yes, I want you to go into details, as far as you find it necessary.

A. I said scalp, with the purpose of detecting infectious diseases, namely, favus, ringworm, alopecia, defect in the

skull, scars and so on. Passing to the eye, we looked at the general conditions of the lids, of the visible part of the conjunctiva and the cornea; the eyelids were averted then and we looked at the conditions of the conjunctiva, of the internal lids, if there was any sign of acute, sub-acute or chronic diseases, referring principally to all types of conjunctivitis and trachoma, and so on. At the same time, we had an idea of the cornea, of the reflex of the pupils. After the eyes, we pay attention to the mouth and nose, if there was any particular odor—I remember I had to reject sometimes people affected with ozena, which I would say is a rather loathsome disease, the conditions of the teeth, which might suggest the presence of disturbance in the gastro-intestinal [fol. 72] tract. Passing at the neck, we examined the glandular system—the lymphatic glands, if present or not; swellings, conditions of thyroid, conditions of the upper clavicular fossae, if there was any stiffness of the cervical column, and at the same time we exchanged questions with the immigrants, making them talk, just to have an idea of the capacity of answering and speaking, starting at this time a little mental test. After, we looked at the chest—if any deformity, the number of breathing, in a general way, if there is any dispnea, and we ausculated the lungs, the heart and the cardiac area. We look at the general condition of the abdomen, paying special attention to the genito-urinary tract. Then, the limbs were examined briefly and we completed our examination of the pulse, of the temperature of the skin during this time, and while questioning always the immigrant, to be sure that the answers were such as ascertained the good mental conditions of the prospective immigrant. The general conditions of the skin during this examination were also taken in consideration.

Q. Now, on what occasions did this general——

A. Pardon me, I——

Q. You are not finished yet?

A. Yes, a very important thing—we examined the hands, nails, and we begged the prospective immigrant to move the arms in different way- and meanwhile we were inspecting the muscular and skeleton system, paying attention to the eventual presence of varicose veins, scars, eruptions—skin eruptions, particularly in the groin, armpit.

Q. Now, on what occasions was this general three or four-

minute examination, which you have just described, ex-
[fol. 73] tended?

A. It was extended in cases of any doubtful or any suspicion of those physical or mental defects contemplated in our law and in the American law, which might debar the prospective immigrant from the United States. I am referring to class A, B, C of your regulations governing the entrance of immigrants into the United States. In those cases it was a little bit prolonged—and a special notation was made in these sanitary cards (scheden sanitara individuale) which always accompanied the emmigrant and was filled in the different sections of the house of immigrants.

Q. Am I correct in understanding that the general three or four-minute examination was made at the immigrant house by the ship's surgeon, who was second in rank?

A. Yes, ordinary—usual.

Q. In other words, would you say that 99 times out of 100 that would be the case, or 90 times out of 100 he would be the one who would make that examination?

A. Yes, and I was——

Q. And you were at the immigrant house in case the ship's surgeon, who was second in rank, should ask your advice in connection with the doubtful cases?

A. Yes, yes, but the things could be postponed to the final examination at the pier the day after.

Q. I don't quite understand your last statement. What would be postponed until the final examination at the pier?

A. For instance, my colleague found something doubtful in this prospective immigrant and he made this notation on
[fol. 74] the sanitary card, and the day after we examined this case at the pier before embarkation.

Q. Now, I believe you have stated that the ship's doctor, who was making the examinations at the immigrant house, was making them under the supervision of the chief medical inspector of the company?

A. Of the chief medical inspector of the company and also under the supervision of the——

Q. Of the government official who was in charge of the immigrant house?

A. Of the government official who was in charge of the immigrant house.

Q. Did the chief medical inspector of your company personally examine every immigrant who passed through the immigrant house?

A. Not usually.

Q. In other words, he was present at the immigrant house to be consulted?

A. Sometimes, and he was asked by telephone for consultations.

Q. So then, if I understand your description of the way in which the examinations were conducted, the ship's surgeon of the boat upon which the immigrants were to take passage was the man who made all of the examinations at the immigrant house, and the chief medical inspector of the company and the Italian government official who was in charge of the immigrant house were available for consultation in doubtful cases discovered by the ship's surgeon?

A. Yes.

Q. On the occasion of each trip of the Conte Rosso when you were the chief ship's surgeon of that vessel, are you able to state approximately how many immigrants embarked per voyage?

A. We embarked an average——

[fol. 75] Q. First, with respect to Genoa and then—first state with respect to Genoa.

A. From Genoa, an average of 300.

Q. That is, an average——

A. Less than in Naples, of course.

Q. An average of 300 who would all come within the classification of immigrants to the United States?

A. Yes.

Q. In other words——

A. Maybe 400, sometimes, but an average of 300.

Q. But that group of from 300 to 400 did not include other passengers?

A. No, immigrants. You asked me immigrants?

Q. Just immigrants.

A. Yes.

Q. Who would be considered immigrants to the United States under the United States laws, is that correct?

A. Yes, and from Naples——

Q. Now, from Naples.

A. An average of 600—700.

Q. Per voyage?

A. Per voyage.

Q. Now, with respect to the other boats of your company that were sailing to the United States during the years 1921 right through 1927, would the averages which you have just given for the Conte Rosso be the same on those boats—in other words, on those boats would you have the same average per voyage as you would have—as you had on the Conte Rosso?

A. On the boats of our company, from 1921 up to——

Q. Through 1927.

A. Yes, about this.

Q. I believe you have mentioned examinations which were made by medical officials of the Italian government. When [fol. 76] were those examinations ordinarily made?

A. That was made at the Regio Ispettorato d'Emigrazione.

Q. I mean generally about what time were those examinations made?

A. I think in the period preceding the examinations we did the day before or one or two days before embarking.

Q. In other words, if I understand you, those——

A. From two or three weeks about, I think.

Q. And if I understand you, the examination which you have previously stated was made by Italian government officials of immigrants to the United States, was ordinarily made several weeks—from two to three weeks before the examination which was made by the company at the immigrant house?

A. I can't remember exactly but——

Q. I mean according to your recollection?

A. Yes, approximately, in that month that preceded the sailing of the immigrants.

Q. In other words, with respect to many immigrants it would be possible that the examination of them by the Italian government would be made as much as a month before the date of embarkation?

A. I think so.

Q. I believe you have stated something about examinations which were made at the office of the company. Did you personally make all of those examinations?

A. Yes, I did, personally.

Q. Of every——

A. (Continuing:) Assisted by one or two nurses.

Q. By one or two nurses?

A. Yes, because I had to give vaccinations and some women and so on.

[fol. 77] Q. Did you personally examine at the company's offices every immigrant who embarked on one of your company's ships?

A. Yes, I did.

Q. You personally did?

A. Yes, I did, second class passengers—immigrants—is better to use the expression immigrants—you ask me immigrants.

Q. If I understand you, you examined all immigrants who were taking second class passage on your company's boats?

A. And also non-immigrants, also the regular passengers. Of course, because we don't want to—intend to bring any disease, then we have to inspect everybody.

Q. Were the Italian immigrants who were taking third class passage on your company's boats also examined at the company's offices before sailing?

A. The immigrants third class?

Q. Yes, the Italian immigrants who were taking third class passage—were they also examined at the company's office?

A. They were examined at the immigrant house, as I told you——

Q. Well, I just wish to get from you exactly what was done. Then, if I understand you, the Italian immigrants who were taking third class passage on your company's boats, were not examined at the company's office prior to sailing, but were examined only at the immigrant house?

A. Only at the immigrant house.

Q. And at the pier?

A. And at the pier, and occasionally in doubtful cases also at the chief doctor's office, and also in doubtful cases.

Q. But in such doubtful cases they would be examined at your company's chief doctor's office, after an examination had first been made at the immigrant house the day before sailing?

[fol. 78] A. Yes, after the notation, sometimes my colleague sent these doubtful cases, accompanied by a man of our company—sent down to be visited by the doctor of the company and by myself, too.

Q. In other words, speaking only now about the third class immigrant passengers, they were only examined at

the company's office in doubtful cases which were discovered at the immigrant house the day before sailing?

A. The day before sailing, and after, in every case—in every circumstance also at the day of sailing, because we had no power to reject these people. The commission had to reject them after a thorough examination of the case and we usually—the ship's doctors and the chief doctor of the company usually presented these cases to the commission at the pier.

Q. How long did the examination at the pier take—that is, for each immigrant?

A. How long?

Q. Yes, how much time was given to each immigrant?

A. Well, I told you—I think I stated——

Q. At the pier.

A. Yes, that we usually start at 8 o'clock in the morning.

Q. What I mean is this—was it an examination which took more than a minute?

A. Sometimes more than a minute.

Q. But ordinarily did it take as much as a minute?

A. A few minutes, I couldn't state definitely.

Q. Well, I just—you were there, I wasn't there.

A. I was there, yes.

Q. And I just want to get your statement as to the——

A. From two up to three minutes, sometimes up to ten, up to fifteen, we took the temperature of the suspicious cases, sometimes we——

[fol. 79] Q. Was it ever as short as one minute for a passenger?

A. I beg your pardon?

Q. Was the examination at the pier as short as one minute?

A. Sometimes it was, because you see they have already this card, everything was ready to—just the last look.

(Adjournment to 2.15 p. m.)

Met after recess.
Present: As before.

Cross-examination of Dr. Valenzi continued.

By Mr. Schulman:

Q. In examinations of the heart and lungs, was the X-ray used as a routine procedure in determining the condition of the immigrant?

A. Not as a routine.

Q. In examining the alien for venereal diseases, was urine analysis made as a routine procedure?

A. Not as a routine.

Q. When was the X-ray used for examination of heart and lungs, if it was used at all?

A. In doubtful cases of tuberculosis and heart diseases, enlargement of heart and aorta.

Q. In other words, only if the ship's doctor who was examining the immigrants had some doubt as to their condition, the X-ray might be used——

A. Might be used, yes.

Q. (Continuing) —for finding out the condition of the heart or the lungs?

A. Yes.

[fol. 80] Q. In examinations for favus of the scalp and for ringworm of the scalp and in examinations for ringworm of the nails, was anything beyond the examining physician's naked eye used in making examination?

A. Well, we could suggest it that the prospective immigrant could be examined under the microscope—microscopically.

Q. What I mean is—that would be in the doubtful cases?

A. In doubtful cases, yes.

Q. But I mean, in the routine examination at the immigrant house which you have described took about three or four minutes, was that examination made with the help of any instrument?

A. Well, we had our magnifying glasses and in doubtful cases of ringworm and favus of the scalp, without any further examination that day we considered the case very suspicious and to be rejected by the company; nevertheless the case was taken at the last examinations before the commission at the port.

Q. After a doubtful case was reported, the immigrant was finally looked at by the——

A. Yes, it was reported. We did notify in that sanitary card and the case was discussed at the end by the commission.

Q. Now, Doctor, you have testified about several trips of the Conte Rosso on the occasion of which some prospective immigrant passengers were rejected.

A. Yes, I did.

Q. I am not interested in particular dates at the present time, but among those cases there were some that were ringworm of the nails?

A. Yes.

Q. Are you able to state from your recollection the symptoms which were presented and which led to the rejection [fol. 81] of those immigrants for ringworms of the nails?

A. Yes. One or more nails presented alterations in the color, in the general nutrition of the nails, showing irregular thickness and roughness of the nail. I am referring now to a very distinct—to a very clear case of ringworm of the nail——

Q. Well, may I interrupt, possibly to save time—it may be that you can state your recollection of the particular cases that were rejected. Do you recall those particular cases that were rejected?

A. Not particularly. I have in my mind the appearance of these nails affected by ringworm.

Q. Well, that I know, of course, would be generally a symptom, but I had reference to the particular cases. You testified, I believe, from some notes which you had made.

A. Yes, even three cases I remember I rejected.

Q. The three that you mentioned—were those notes made by you at the time those three immigrants were first examined or were they made at the time that those immigrants were rejected?

A. They were made at the very moment when the commission took the decision of rejection.

Q. Is that true of all the notes that you have, from which you refreshed your recollection in testifying?

A. Yes.

Q. That is, those annotations which you used this morning in testifying are only annotations of cases in which the immigrant was rejected by the commission, is that correct?

A. Yes, that's correct. All those cases were rejected after a careful examination by the commission.

[fol. 82] Q. And you made annotations so as to be able to make a——

A. Yes, to report to my company.

Q. Did you make annotations with respect to every immigrant that was personally examined by you—every one prior to the examination at the pier?

A. Excuse me, will you repeat?

(Question read.)

A. (Continuing) Not everybody, no; only the cases which showed something interesting.

Q. Did you personally examine the immigrants Eugenio Sbragia, Giuseppe Cecconi and Pasquale Giustino prior to the time that they were examined at the pier?

A. I must have examined them—you mean before—at the pier?

Q. Before the pier.

A. As a routine I did not examine the third class passengers before the embarkation at the pier because I was examining the second class passengers and immigrants at the company's office, but I examined all third and second class passengers on the occasion of the embarkation, as I remember very well——

Q. Your examinations at the pier, as I understand it, were made at Genoa and also at Naples, is that correct?

A. Yes.

Q. Now, then, according to my understanding of the system which was in force during the years 1923 to 1926, inclusive, there was a commission at the pier consisting of the port doctor, ship's surgeon——

A. The Royal Inspector——

Q. (Continuing) The Royal Inspector of immigration and two other members——

A. A port officer, who acted as a rule as a secretary, and, if present, the Royal Commissioner.

[fol. 83] Q. Of that commission at the pier, how many were doctors?

A. The Royal Inspector of Immigration, if not a doctor, was always assisted by an expert—a doctor.

Q. Then, in addition to that——

A. Yes, if the Royal Inspector was not himself a doctor, he had the assistance of a doctor.

Q. Of which doctor?

A. Usually one colonel of the Navy—from the Navy.

Q. What I am trying to get at is how many doctors was the commission made up of?

A. The port doctor who has a very important position, the ship's doctor—I would say the ship's doctors, because we were always no less than two, and the Royal Commissioner.

Q. You said that at these examinations there would be two of the ship's doctors, is that correct?

A. Yes.

Q. That is, the examinations at the pier?

A. At the pier.

Q. Did these two doctors look over the same entire group of individuals, or was the group of passengers divided so that one doctor would examine one group and another doctor examine another group?

A. No, no.

Q. Just explain how that was done.

A. We started as a routine with the third class in the early hours in the morning, and we examined one by one all the passengers. After we started with the second class, and we were always on duty, both first doctor and second doctor; then everybody had to pass under our supervision.

Q. What I mean is this—did two doctors in each instance look at the same passenger?

A. Yes, yes, as far as I can remember.

[fol. 84] Q. At the same time?

A. Yes, usually with this—one took care of a certain part of the body and the other one looked at the other part of the body, and if there was any annotation we called each other our attention, just on the very case, just to examine more carefully and to bring this case under the attention of the commission.

Q. In other words, each of the ship's doctors did not make a complete examination of each passenger but one would make an examination of certain parts of the body and the other would make an examination of other parts of the body, and if anything was discovered, they would make annotations and that would be called to the attention of the Commissioner?

A. Excuse me if I interrupt, because I must explain better.

Q. Certainly, you just state——

A. Yes, I stated before that I examined thoroughly the second class passengers and immigrants. My colleague examined thoroughly the third class passengers and immigrants.

Q. Well, I am speaking only about the pier now.

A. And at the pier we were there again examining the same persons we had already thoroughly examined. Then, it was a special kind of supervision to the work we did the day before. It was a special kind of—in some way it was a critical review of what we did the previous day separately—each separately.

Q. Would you be able to state that you examined—you personally examined each of the immigrants who are involved in this case? If you do not know who they are, I [fol. 85] have no objection to your looking at the names in the complaint or on a list, so that you can see whether you personally examined these people by referring to their names?

A. Well, as far as I know, I know that Eugenio Sbragia, Giuseppe Cecconi, and Pasquale Giustino rejected by the United States immigration service, were passengers on the ship—on the Conte Rosso, the ship where I was at that time as a chief doctor, and they must have been examined prior to embarkation by me and by my second doctor—my colleague.

Q. Well, if they were third class passengers, they wouldn't necessarily have had to be examined by you?

A. They would necessarily be examined——

Q. They would in that case be examined by the other doctor, if they were third class passengers, before the pier examination?

A. But I did personally examine all passengers at the pier, so I am sure I did examine also these three.

Q. Now, with respect to the other immigrants who are involved in this case and whose names you have before you now, would your answer be the same, that they must have been examined by you because you examined all immigrants?

A. Yes, if they were on that ship, of course—on the Conte Rosso.

Q. Was this system of examination at the pier that you have described as being conducted by the commission, in force during the entire period 1921 to 1927, inclusive?

A. Yes, it was, because of the protection that our government gave to the prospective immigrants.

[fol. 86] Q. Now, with respect to trachoma, according to your recollection what were the symptoms that were present at the time that these various immigrants were rejected on the occasions that the Conte Rosso was sailing to the United States? You will remember that you have said there were some rejections of trachoma?

A. Yes. They showed either all symptoms of an actual trachoma or symptoms of already-treated trachoma, but still——

Q. Just let me interrupt you, Doctor. What would be the symptom of an already-treated trachoma?

A. All the symptoms are not so evident.

Q. I mean in a general way.

A. In a general way, the disease is under the control of the treatment, more or less. You see, some symptoms of trachoma, if treated, are not so conspicuous as they are if the trachoma has not been treated before. Sometimes somebody thinks to be cured, but maybe not sufficient treatment. That is very chronic and a very long treatment.

Q. In the years that we have been talking about—that's 1921 to 1926 and 1927, if a man showed a scar in the conjunctiva, indicating a history of trachoma, would he be permitted to embark?

A. As a rule, no, because I remember very well we had once a circular from our company which enabled us to refuse a passenger even if suspicious of trachoma—even if suspicious.

Q. You say as a rule such an immigrant was not permitted to sail. Under what circumstances was an immigrant who had a scar in the conjunctiva——

A. Was not permitted to sail, no, because the trachoma [fol. 87] is such a kind of disease that according to the actual knowledge we have we cannot state if it is entirely under the control or entirely checked disease or not.

Q. Well, were there cases in which scars were present but the immigrant was nevertheless permitted to sail?

A. Nevertheless not permitted to sail.

Q. You mean to say, then, that if an immigrant showed a scar in the conjunctiva, which was of a trachoma char-

acter, that he would be immediately rejected and not permitted to sail at all?

A. Usually those cases were discussed very much and also the immigration officers and doctors were very much concerned of the danger that this immigrant was meeting in the other side—I mean arriving here, and just for this danger of rejection the prospective immigrant was suggested to stay home, to have some more treatment, you see.

Q. Yes.

A. (Continuing:) Just because our doctors there, the immigration doctors were concerned about these cases, you see, they were patronizing the immigrant and they say to the company if you bring over this man and if he is rejected you are going to give a certain damage to this person if he will be rejected from the States, then is better you don't take this responsibility.

Q. But where a man presented that condition of the conjunctiva which I have described and, as a doctor, you of course know what I mean—was he at any time permitted to sail on your company's boats to the United States?

[fol. 88] A. As far as I know, very seldom I took persons who had an entirely checked and cured diseases of such a kind—very seldom, unless any evidence of the disease was entirely disappeared and from long time.

Q. Will you describe briefly the condition of the eye——

A. But is better if you allow me, really—if you have no objection, I would like to state this better.

Q. I think if you will let me ask you a question I will help you to explain it. Will you briefly describe the condition of the eye which would be sufficient evidence for you to conclude that the disease was completely cured, as you say?

A. All the different sections of the conjunctiva and the cornea must be of a clear appearance without thickening, without discharging, without redness, without granulations; the conjunctiva of the upper lids in certain circumstances show an entirely completed process of reparation and recovery from the disease. The scars are in these circumstances very whitish. The conjunctiva is again smooth and bright—clear.

Q. If an immigrant had a conjunctiva which had one scar which was healed as you have described, or two or three scars which were healed, and the conjunctiva was in a smooth, clear condition, then you would permit such an immigrant to embark, is that correct?

A. Yes, I would have, unless the permanent results of the disease didn't leave any defect—any permanent defect in the eyelids (ectropion and entropian) or in the cornea (pannus).

[fol. 89] Q. In examining prospective immgirants to the United States for gonorrhea or gonococcus infection, what was the method which you employed to determine the existence of that disease?

A. Any discharge from the urinary meatus was held for suspicious and rejected.

Q. But if an immigrant did not show any discharge, would he be passed then as not being afflicted with that disease?

A. If he didn't show any discharge.

Q. He would be passed?

A. Yes.

Q. What was done to ascertain whether a prospective immigrant had syphilis in any form?

A. At the examination we pay attention to the skin of the whole body. We tried to detect any scars or actual ulcers of a suspicious character of syphilis. We examined carefully all the lymphatic glands, particularly at the elbow, epitro-clear glands and the glands of the groin. If in children we pay attention to the nose, teeth and eye. In adults we pay attention to the natural orifices and of course we had always in our mind the possibility of an old case of syphilis. I remember that I had to reject a suspicious parasyphilitic person.

Q. Just let me interrupt you with a question—were any blood tests made to ascertain whether the immigrant had syphilis, as a matter of routine procedure?

A. Not as a matter of routine, because we think that a careful clinical examination and detection of symptoms is more useful in these cases than to try to detect a systematic condition in the blood which may speak of syphilis, because we know that there are many circumstances in which such a [fol. 90] systematic condition of the blood is present without indicating syphilis (for instance, liver diseases, recovering from special diseases and other circumstances).

Q. Now Doctor, you have stated that it is rather usual for the ocean trip to bring out latent diseases?

A. I saw that in many circumstances.

Q. You used the expression "rather usual". Now why is that so? Why should the ocean trip bring out latent diseases?

A. I am referring to all those circumstances, motions and body strain, apprehension and change of food and climates which affect the immigrants in many ways and which may revive latent foci of different diseases.

Q. Well, now, would an ocean trip necessarily revive latent diseases like trachoma or ringworm of the scalp or ringworm of the nails?

A. I am not referring to these parasitic diseases, but I am referring to tuberculosis, to malaria, and to a certain extent also to the cardiac diseases, the middle ear diseases.

Q. Wouldn't an immigrant have to be in pretty bad condition at the time of embarkation for latent disease to be revived, as you put it, in the course of the ocean journey?

A. Can you explain — me in other words? I am not exactly clear.

Q. I will try to rephrase the question so that you can understand it better. Wouldn't it mean that an immigrant was in bad condition at the time he embarked on the boat if some latent disease, as you have called it, would appear in [fol. 91] the course of the ocean voyage?

A. Oh, I would say yes, that an immigrant who embarks at the day of embarkation has to show any bad conditions if he is——

Q. Yes, or at least a suspicion of bad condition?

A. Oh, no, no, no, sometimes these diseases are checked and, for instance——

Q. What do you mean "are checked"?

A. I mean that sometimes a person cannot show any symptoms of malaria, for instance, or tuberculosis, and during voyage conditions may arise, like influenza very often, that revives a latent tuberculosis or other conditions during voyage may revive also an old, latent malaria.

Q. Well, if those diseases could revive during the voyage, why couldn't they be discovered when the examinations were made at the immigrant house or at the pier? In other words, if the diseases were latent, as you say, why couldn't you discover those disease when you examined at the immigrant house?

A. Well, because those diseases don't give symptoms in those days.

Q. Well, if the——

A. (Continuing:) If you suffer, for instance, ten years ago of malaria, and you never had any other attack of malaria, you may have during voyage an attack of malaria, as I saw in many circumstances.

Q. You mean to say, then, if the malaria was latent, it could not be discovered by the examination which would be given at the immigrant house?

A. Yes, yes.

Q. It could not be discovered?

A. No, no.

Q. And with respect to tuberculosis and heart disease?

A. The same thing. There are other arguments supporting this view of mine.

[fol. 92] Q. You say, if those were latent, it could not be discovered at the immigrant house?

A. I am referring to the tuberculosis in connection with the other diseases which may be revived—the tuberculosis—during voyage.

Q. Taking tuberculosis alone now—if tuberculosis were latent, do you mean to say that it could not be discovered at the examinations at the immigrant house?

A. Before embarkation?

Q. Before embarkation.

A. No, no.

Q. Would you say the same——

A. I am referring particularly to the recurrences of the diseases in the bronchial tubes.

Q. Well, are you able to state definitely what time it would take for the latent disease to break out during the voyage—I mean a disease like tuberculosis——

A. No.

Q. (Continuing:) —or heart trouble, heart disease, valvular disease of the heart.

A. No, no.

Q. You could not say just how long it would take to break out?

A. No.

Q. During the examinations at the immigrant house, in the course of the years that we have under consideration—1921 to 1927, was it not possible for the examining doctor to find out from examining an immigrant whether he would be likely to develop such a disease as tuberculosis in the

course of the voyage, because of his general condition at the time of the examination at the immigrant house?

A. No, because often latent tuberculosis runs without affecting the appearance of good health or without giving pulmonary symptoms of its presence—I mean pulmonary symptoms at the clinical examination (inspection), palpa-
[fol. 93] tion, percussion, oscultation of the chest.

Q. Would you give the same answer that you have just given with respect to valvular disease of the heart?

A. Well, about valvular disease of the heart, I can say that frequently we find laborers who work without giving symptoms of a cardiac disorder. Evidently in those cases the ability of earning a living cannot be affected and the persons themselves don't know very often to have such a disease.

Q. But isn't it a fact that when such persons do have such diseases of the heart, there comes a time when the compensation process, as it is called, breaks down, with the result that the person is incapacitated?

A. Well, it might come but it cannot be—do you ask me if in such circumstances——

Q. Yes, if in such a case, if it isn't a fact that this compensation process—in other words, the heart muscle compensates where there is some defect of the heart—that's so, isn't it?

A. Yes.

Q. And that process keep on for quite a time possibly. The result is the heart muscle grows larger; there comes a time, though, when finally the strain on the heart is too great—this compensating process—with the result that you have a breakdown?

A. It might be possible, yes.

Q. In other words, for a person who would be doing hard work—as time went on, there would be a tendency to have a breakdown?

A. Yes, there is, in those circumstances, and as a fact, if we detect those conditions of the heart, we would have [fol. 94] rejected the prospective immigrant.

Q. That is, if you detect it?

A. Yes, if we detect it. Of course, that is included in the Class B of your law and regulations.

Q. With respect to ascertaining whether or not an immigrant was feeble-minded—if the immigrant was able to an-

swer a few simple questions readily, would he be passed as being of sound mind when the examination was made at the immigrant house or at the pier?

A. Yes, they were passed if they answered properly to our questions.

Q. How many questions would you ask them——

A. Just few, three—four—six; in doubtful cases, we went on, you see—just to——

Q. If they got past those first three or four questions—if they managed to answer those first three or four questions all right, then they would be passed as of sound mind?

A. Yes, if there was any evidence of an uncertainty or too long period in answering or signs of not quick understanding and so on.

Q. As I understand it, the test for feeble-mindedness was to ask the immigrant a few questions and if he answered them satisfactorily he was passed?

A. Yes, including——

Q. Just a moment. And if he was hesitant in answering or took too long a period of time, then he would be given a further test, is that correct?

A. Yes.

Q. And that was the method employed to determine feeble-mindedness?

A. Yes.

[fol. 95] Redirect examination.

By Mr. Tibbetts:

Q. In referring to gonococcos on your cross examination, I believe you stated that if on examination you did not find any discharge from the meatus that the person being examined would be passed. Would you pass him if he showed any other sign of gonococcus?

A. Most certainly not.

Q. Are there other signs than the discharge which you have mentioned, that might indicate gonococcus?

A. We rejected every person who showed symptoms of a gonorrhea—of discharging or——

Q. Is that the only sign that would indicate gonorrhea?

A. Of course is the principal sign that we could detect.

Q. The principal sign?

A. The principal sign.

Q. Can you think of any other signs that would indicate gonorrhea?

A. Sometimes gonorrhea affects the eyes, but in those circumstances it is—for instance, it affects the eyes—for instance, gonorrhea affects the eyes, but then we have a very severe conjuntivitus, for instance. We can have an evidence of a gonorrhea sometimes from an enlargement of the testes. Then, in those cases, finding some irregularity in the genito-urinary system, we put those cases aside to be reviewed—to be better examined (orchiepididimitis, or enlargement of glands near the groin).

Q. Referring to the development of diseases in the course of the voyage, has it been your experience that some diseases [fol. 96] of a contagious or an infectious nature have developed during voyages, where the conditions were not latent—that is, where they had developed for the first time during the voyage?

A. Yes.

Q. Would that be true of venereal diseases of some kind?

A. Yes, yes.

Q. Would it be true of any disease that might be contracted from contact or from being exposed to a contagious disease?

A. Exactly, exactly. This is the case with venereal diseases, gonorrhea, shanker, syphilitic ulcers—you are referring only to these infectious diseases?

Q. I am speaking also of contagious diseases, where they might be contracted by being exposed to some one who has it.

A. Yes, also.

Q. Can you name a few examples of such diseases?

A. For instance, influenza, epidemic meningo and syphilitis, scarlet fever, measles, typhoid fever, typhus, infantile paralysis, polio syphilitis and polio mielitis, mumps, chicken pox—all these things may be spread during the voyage after having contracted ashore, and we cannot detect these things in the period of incubation.

Q. Were the questions which you asked to determine whether a person was feeble-minded, such a character, in your opinion, that would bring out the state of the person's mentality?

A. Yes, they were.

Q. With regard to the number of passengers carried from Genoa to Naples, did the number increase or decrease in years after 1923 or 1924?

A. The number decreased.

[fol. 97] Q. Were the answers which you made as to the average numbers on cross examination—did they refer principally to the earlier years?

A. An average of those years—the period covering 1921-1926.

Q. You took that as an average for that period?

A. Yes.

Recross-examination.

By Mr. Schulman:

Q. Would you say that syphilitic ulcers are something that could develop in a short space of time?

A. Yes.

Q. How long?

A. During seven—ten days, that's just a voyage.

Q. Without it being possible to ascertain prior to embarkation that the man was affected?

A. Yes.

Q. Concerning gonococcus infection, isn't it true that a bad case of gonococcus infection couldn't possibly exist unless the man had the disease for a number of weeks?

A. I didn't get the question.

Mr. Schulman: I withdraw the question.

Q. Isn't it a fact, Doctor, that if any diseases like gonococcus, syphilis, tuberculosis, favus of the scalp, ringworm of the scalp, ringworm of the nails, valvular disease of the heart, are in an advanced stage, that they would have to have a history in the patient of at least a month to be in an advanced stage?

A. If in an advanced stage, they have to have symptoms.

[fol. 98] Q. Which would go back at least a month?

A. Yes, yes—all this group of diseases, if they are in an advanced stage, they must have a prior existence.

Q. Existence in the individual of at least a month?

A. Well, of a certain period, yes.

Q. That is more than two weeks?

A. Yes; in advanced stage, yes. They must show symptoms, in one word. If these diseases come to our observation in an advanced stage, they must have back a certain period of evidence of symptoms.

Q. In other words, when an individual has one of these diseases, and I speak also of trachoma in an advanced stage, it means that a month prior to that stage, he had symptoms of the disease, isn't that so?

A. I cannot state a month as a strict——

Q. Well, I mean he would at least two weeks prior to that stage have symptoms of that disease?

A. Yes.

Q. Isn't it also a fact that the symptoms which he would have at least two weeks prior to the advanced stage of one of those diseases would be such that they could be ascertained by examination?

A. Yes, exactly.

New York, June 17, 1930.

The Court: Are you suing under a statute, Mr. Tibbetts?

Mr. Tibbetts: Yes (handing to the Court).

(Discussion off the record.)

The Court: You have no objection to the evidence being received, subject to a motion to strike out?

[fol. 99] Mr. Schulman: On the ground it is not admissible in evidence, but as a matter of expediency at the present time.

OFFERS IN EVIDENCE

Mr. Tibbetts: The plaintiff offers in evidence deposition of Alfonso Falco, Eugenio Verando, Roddolo Giacento, Candido Balovino, Vincenzo Leanza, Nicola Izzo, Sebastiani Musu, and William Gargiullo.

Also the depositions of the following witnesses taken in the case of Navigazione Generale Italiana, against United States, Docket No. L-45-182, Reale Federico, Duranti Valentini Curzio and Stanley R. Lawson.*

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*(NOTE: Pursuant to leave of this Court the foregoing testimony is not printed in this record but the original depositions are filed in the office of the Clerk of this Court, to be taken and considered as a part of this record.)

I offer in evidence a circular letter from the Surgeon General of the United States, dated December 11, 1926, which has been obtained from the files of the Surgeon General's office at Washington, as to which, I understand, counsel does not object for lack of verification, but may want to object on other grounds.

The Court: These fines are imposed by the Secretary of Labor and collected by the Collector?

Mr. Tibbetts: Yes.

The Court: That is the reason he is the defendant?

Mr. Tibbetts: Yes.

The Court: They are paid to the Collector, that is the rea-
[fol. 100] son the suit is against him?

Mr. Schulman: Yes.

(Discussion off the record.)

(Marked Plaintiff's Exhibit 1, 6/17/30.)

Mr. Schulman: I object to the documents offered by plaintiff's counsel. It is incompetent, irrelevant and immaterial, and not binding on this defendant.

Mr. Tibbetts: I now offer in evidence the following sections of the regulations of the Department of State, relating to the admission of aliens into the United States:

Sections 140, 141, 142, 162, and 192.

(Marked Plaintiff's Exhibit 2, 6/17/30.)

Mr. Tibbetts: I now offer in evidence the certified records relating to the hearings before the Secretary of Labor in each of the causes of actions involved in this action, and ask that they be marked consecutively exhibits from 3 forward, there being fifteen of these exhibits.

Mr. Schulman: I would like to examine these documents to see whether I want to object to them.

Mr. Tibbetts: Later you can put your objection in.

Mr. Schulman: I will object to the admission of Exhibit 2 on the ground it is incompetent, irrelevant and immaterial, and not binding on this defendant.

The Court: Overruled.

Mr. Schulman: Exception.

[fol. 101] The Court: I will take it subject to a motion to strike.

Mr. Schulman: All right.

(Considered marked Exhibits 3 to 17 inclusive—fifteen papers, 6/17/30.)

Mr. Tibbetts: That is all.

Dr. MERRIGIO SERRATTI, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Tibbetts:

Q. What is your residence, Doctor?

A. New York.

Q. What is your present occupation?

A. I am General Manager of the Lloyd Sabaudo Lines in the United States and Canada.

Q. How long have you been General Manager for the United States and Canada?

A. Ten years.

Q. Did you practice your profession before becoming general manager in New York?

A. I practiced after getting my degree, for three years.

Q. Practiced what?

A. Medicine.

Q. Where did you take your course in medicine?

A. Pavia.

Q. In Italy?

A. In Italy. It is the university of the City of Milan, in Italy.

Q. What was the length of the course?

A. Six years. Then I had two years as director of the Physiological Institute in the University.

[fol. 102] Q. When did you obtain your degree as Doctor?

A. I obtained my degree as Doctor in 1895.

Q. And then took two years additional work?

A. Yes.

Q. What experience did you have as a Doctor before you became connected with the Lloyd Sabaudo Company? State briefly your experience through the intervening years?

A. In 1897 I entered the Italian Navy and continued in the Italian Navy up until 1920.

Q. During that period did you have anything to do with the Immigration Service of Italy?

A. Yes, I spent nearly all my time abroad, also being a Doctor in the Navy, but I was always kept abroad and had a chance to specialize in tropical diseases, and in China, India, and Mexico. And then I entered the Immigration Service in 1902 and was for six years Royal Commissioner on board steamers, carrying immigrants to South and Central and North America.

Q. From where?

A. From Italy.

Q. Does Italy have any law relating to the immigration of Italians?

A. Italy was the first country to realize that being a great immigration country it had to discipline immigration.

Mr. Schulman: I move to strike out the answer as not responsive.

The Court: Overruled.

Mr. Schulman: Exception.

Q. Go on, Doctor.

A. That has been this immigration, and later on limiting it to the steamship lines, who were carrying immigrants [fol. 103] practically like cattle, without the proper care, food and everything—medical assistance, and then later on, because the different countries receiving immigrants, finally started to discriminate on the different immigrants, and refused to accept some of them, mostly on the medical conditions.

Q. When was that law adopted?

A. It is called the 1901 Law. It was revised in 1910.

Q. Was any machinery set up in Italy for the purpose of putting that into effect?

A. Yes. There is the law, and there are various regulations and special machinery was set up. The machinery was divided into two parts: one, the assistance of immigrants on board the steamer during the trip, and the law was carried on by steamship companies until the work was given to the doctors of the Navy.

Q. And what were they called?

A. Royal Commissioners. Any boat of any flag leaving Italy with more than fifty Italian immigrants, had to carry

on board a Royal Commissioner, a Doctor of the Italian Navy.

Q. What machinery was set up ashore, before the departure?

A. First of all, the steamship lines were called responsible for the dangers for the immigrants who were to come to the Board of Immigration and be exempted from immigration on account of medical defects, or even on account of other reasons——

Mr. Schulman: I object to the witness testifying in a general way as to what the Italian Law was.

[fol. 104] The Court: The testimony of the witness as to the Italian Law will be disregarded. I will take the testimony now as to what actual machinery was there. Strictly, it is true that evidence of the Italian Law—I am taking that only preliminarily.

Mr. Schulman: He should finish his answers.

The Court: I will strike out the testimony as to the details of the Italian Law and the testimony as to what was done in Italy in the way of medical examinations. Along other lines it will stand.

Mr. Schulman: Also all reasons that the witness states that certain things had to be done, should be stricken out as not proper evidence.

The Court: All right.

Q. Taking the machinery which was set up under the Italian Law, will you take Genoa, and state what, if any, branch was established in Genoa?

A. The spirit of the Italian law was that the immigrant would not be rejected from the country he was going to.

And that spirit of the Italian Government has issued an order that the steamship line was responsible for the expenses and the trouble that an immigrant would have to stand if he was coming to the Board of Immigration and rejected by the Board of Immigration and he had to go back to his town in the interior. And the steamship line was ordered to pay the transportation of this immigrant back home, and also so many days of work lost.

[fol. 105] Q. Was there any provision to penalize a steamship line if an alien was brought to the United States and rejected here, under the Italian law?

Mr. Schulman: I object to the witness testifying as to the Italian law.

Mr. Tibbetts: He knows that. He is the manager of a steamship company.

The Court: He can tell what is the practice. I do not think it is competent to ask what the law is. He can state any case he knows of a steamship company paying fines imposed by the Italian Government.

The Witness: The steamship line has to pay and reimburse the immigrant that is rejected by the Board of Immigration and has to pay him back and refund him the ticket, and so much a day for the days lost by the immigrant who is a workman. So there is a special commission of the Commissariat of Immigration in Rome. There is a special commission that decides case by case, how much the steamship line has to pay the immigrant of an indemnity by the time lost, besides the steamship ticket money, so much so that there is an agreement between the Italian Government and the American Government that when the American Government does the same thing, there is an order of the steamship line to pay, to deposit the money of transportation here with the treasurer, and we are able to [fol. 106] notify the Italian Government and that Commission takes into consideration the fact that the immigrant gets the money also on this side, not to have the immigrant get money twice.

Mr. Schulman: I wish to object to the entire line of testimony on the ground it is incompetent, irrelevant and immaterial, and has nothing to do with the issue before the Court, and very obviously is an attempt to introduce testimony that would disclose or show this company acted diligently.

The Court: Overruled.

Mr. Schulman: Exception.

Furthermore, this testimony is repetitious, we have had the very same testimony by at least two witnesses; it is cumulative.

The Court: Overruled.

Mr. Schulman: Exception.

Q. Is there any possibility of profit to the steamship company in bringing to the United States aliens who may be rejected from admission into the United States?

Mr. Schulman: I object to the form of the question.
Mr. Tibbetts: Withdrawn.

Q. You acted as Royal Commissioner for a time on boats carrying immigrants?
A. Yes.
[fol. 107] Q. What was your position from 1911 or 1912 to 1920?
A. In 1910 I was sent to New York when cholera broke out in Italy, to see what the two Governments could do, working together, in order to let the commerce between Italy and the United States continue, and at the same time to guarantee for the United States a right of protection from the epidemic entering the United States.

Mr. Schulman: I move to strike out the answer on the ground it is incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Schulman: Exception.

Q. Were you sent here by the Government of Italy?
A. Yes.
Q. How long did you remain in that service?
A. I worked in New York for the second half of 1910, all of 1911, and the first part of 1912. That is, as long as the cholera epidemic lasted in Italy.
Q. What did you then do?
A. I was at the disposal of the American doctors that quarantined New York. I was sending to the other side all the suggestions given by the Director of Quarantine about examinations of immigrants, and how the disease developed abroad. I gave instructions to the officers and to the Royal Commissioners who were on board.
Q. Were you still in the employ of the Italian immigration service?
A. Yes. My title was Commissioner of Immigration, at the Italian Consulate in New York.
[fol. 108] Q. How long did you continue in that capacity?
A. When the cholera was over, then the Italian Government felt that with the knowledge that I had of the immigration service, I should be of some use in maintaining good relations between the American Government and the immigration service in Italy. I stayed over here as Commissioner of Immigration up to 1920.

Q. That is, until you went with the Lloyd Sabaudo Company?

A. I resigned from the Navy in March, 1920, and was offered the position I accepted in June, 1920.

Q. At the time you entered the services of the Lloyd Sabaudo, were you familiar with laws and regulations of the United States relating to the admission of aliens, having in mind medical cases?

A. Exactly. That was my job.

Q. Did you give any information to your company and the doctors of your company as to what the requirements of the American laws were, and what they should do on the other side?

A. Through the kindness of the immigration authorities in the Port of New York, and above all, Mr. Uhl, I had free admission to Ellis Island, and I also could assist and visit the immigrants.

Q. My question is, whether or not you gave any information or instructions to your company after you became manager of Lloyd Sabaudo? Did you put forward any instructions or information to the company?

A. I continued for my line, but also for the other Italian lines, the same service of information that I was doing when I was Commissioner of Immigration.

Q. Were you acquainted with the ships' doctors of the [fol. 109] Lloyd Sabaudo who came to New York?

A. Very much so.

Q. Did you discuss the United States law regarding immigration——

A. I did.

Q. —with them?

A. I did.

Q. Did you give them such information as you had?

A. I did.

Q. What would you say, doctor, as to the fitness and ability of the doctors who were employed by the Lloyd Sabaudo during the period from 1922 up to the present time?

A. Very good doctors.

Q. Would you say they were the same class of doctors who were employed at Genoa and Naples?

A. All of them.

Q. Do you go frequently to Italy?

A. Every year practically.

Q. What ships of the Lloyd Sabaudo carried passengers to the United States chiefly during 1922 to 1927?

A. Conte Rosso and Conte Verde.

Q. What ships superseded those?

A. Conte Biancamano and Conte Grande.

Q. Were you acquainted with Dr. Valenzi, who was chief surgeon of the Conte Rosso?

A. Yes.

Q. And also chief doctor of the Conte Verde?

A. Yes.

Q. State what the practice of the company was with respect to keeping or not keeping the same person in service as chief doctor on the boats coming to the United States?

A. The practice is, when you get a good person, to keep him.

Q. How long has Dr. Valenzi been in service for your line to the United States?

A. Since I am there; I always saw him.

[fol. 110] Q. How long has the chief doctor been in service for your company on the Conte Verde?

A. Same thing.

Q. What is his name?

A. Vernadi.

Q. What was your reason for keeping them continuously in service?

Mr. Schulman: I object to the form of the question.

Mr. Tibbetts: I think it is material. Cross examine.

Cross-examination.

By Mr. Schulman:

Q. Dr. Serrati, I show you a list of the aliens who were excluded from the United States who were certified as being infected with disease or physical disability, which could have been detected by competent medical examinations abroad, and ask you whether you personally examined any one of those persons (handing witness)?

A. No, I did not. It is not my job.

Mr. Schulman: That is all.

DANIEL A. CAPUTI, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Tibbetts:

Q. Mr. Caputi, are you employed by the Lloyd Sabaudo?
A. Yes, sir.
Q. In what position?
A. As landing agent.
[fol. 111] Q. What are the duties of a landing agent of a steamship company?
A. I am in charge of the immigration department, practically, of the company. A landing agent meets the boats at Quarantine and he gets the United States Government immigration inspectors to expedite the examination of passengers. Those who are ordered held, pending the evidence of further examination, I arrange to transport them to Ellis Island and at Ellis Island we watch all the cases. I am the senior official connected with Ellis Island. The company has one representative there.
Q. How long have you been in that or a similar capacity?
A. I joined them in 1919, as an assistant landing agent, and then a year later I was made landing agent. When Dr. Serratti organized this branch in New York, he promoted me to landing agent. I have been landing agent ever since.
Q. What were you doing before you joined the Lloyd Sabaudo?
A. Inspector immigration at New York, working for the United States Government.
Q. How long did you serve as inspector?
A. Nine months.
Q. Are you familiar with the various causes of actions in the cases which are now on trial?
A. Yes, sir.
Q. Can you state whether or not you had anything to do with the making of the protests that were made in these cases?
A. I protested every case since I have been landing agent. I studied the cases that were rejected by the Government. I read the minutes of the hearings given to

[fol. 112] them, and I communicated with the home office, and upon all of those things I based a protest in each case, which was submitted to the Commissioner. Each protest, in the ordinary course of business, was sent to Washington.

Q. Have you got any record of the total number of immigrants, aliens and temporary visitors, who were carried to the United States by the Lloyd Sabaudo from 1922 to 1929, inclusive?

A. Yes, sir.

Q. Have you computed that total number?

A. Yes; from February 1, 1922, to December 31, 1929, we brought to the United States 99,236 aliens.

Q. Have you got any record as to the number of persons rejected of that number on account of disease or physical disability?

A. Yes.

Q. Please state what that number was?

A. 116.

Q. Have you calculated what the per cent of the number rejected was to the total number carried?

A. Yes; a very small fraction over one per thousand.

Mr. Tibbetts: Cross examine.

Cross-examination.

By Mr. Schulman:

Q. Did you personally make physical and mental examinations of aliens who arrive?

A. No, sir.

Q. As an immigration inspector, in the service of the United States, did you make physical and mental examinations of aliens arriving?

A. No, that was the duty of the company.

[fol. 113] Q. What was your duty?

A. To see that the person complied with the immigration law.

Q. You were only interested as immigration inspector, of the legal right to enter the country, rather than the physical and mental condition of the alien?

A. That is right.

Q. You have stated that you protested every case in which an alien carried by your company was rejected by the United States?

A. Yes.

Q. Are you positive that you wrote a letter of protest in every case?

A. I dictated the letter.

Q. Was it signed by you, or some other official? A. I think they were signed by Dr. Serratti. I may have signed some in his absence.

Q. Were there any cases in which the protests were written by attorneys in Washington?

A. No.

Q. Or were written by the company's office in the United States and signed either by you or Dr. Serratti, who has previously testified?

A. Yes.

Q. Is that correct?

A. Yes, sir.

Q. You have stated that in round numbers, the total number of aliens brought to the United States by your company was 99,000. From what period was that?

A. January 1, 1922, to December 31, 1929.

Q. That 99,000 represents immigrants of all classes, does it not?

A. Aliens of all classes.

Q. Aliens of all classes?

A. That is right.

Q. In other words, whether they claim admission on the ground of a temporary visitor or business or pleasure, or they claim to be non-quota or claim to be quota?

A. Aliens of all classes.

[fol. 114] Q. That is the entire group?

A. Yes.

Q. Where did you get that figure that you have given us of the total amount carried?

A. I got the book and I have the book which I can see every alien who has entered from the time I have been landing agent to date.

Q. Did you keep the books?

A. I kept the books. I have an assistant who helps me.

Q. Do they show how many aliens per voyage arrived at this port on the company's ships?

A. No, we have a book issued by the Mediterranean Conference. I do not think that separates the citizens and aliens. I have got one book which shows, ship by ship, how many aliens we bring to port, and the names and the cases.

Q. I am asking you as to the transportation to the United States.

A. Yes.

Q. Can you show from your books on a particular day, take one of the dates involved in this case, for example, Conte Verdi, sailing August 8, 1923. I suppose that would be from Naples. Are you able to show how many aliens arrived in the United States on that voyage?

A. Yes.

Q. The number of aliens?

A. Yes.

Q. How many?

A. I have something better than a book. I have got the head tax bill receipted by the Collector of Customs. I can show you that right here. I have it right here.

Q. I would like to see that.

A. (Witness hands to counsel.)

Q. For the purpose of saving time on your cross examination, will you produce and make available for the defendant, if he wishes to offer this in evidence, each of your records which shows the number of aliens arriving [fol. 115] in the United States, with particular reference to the sailing dates that I have on this sheet of paper before me, which has been prepared by your counsel? Not now, but will you make that available before you leave here today?

A. Mr. Tibbetts, is that all right?

Mr. Tibbetts: Yes.

Q. Out of this 99,000 only 116 over this whole period of time, were excluded by the immigration authorities on account of a loathsome, contagious disease, or physical defects?

A. Yes.

Mr. Schulman: That is all.

Dr. Dietro Dandini Desylva, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Tibbetts:

Q. What is your present residence?

A. Florence, Italy.

Q. What is your profession?

A. Medical doctor.

Q. Are you connected with Lloyd Sabaudo?

A. No, not any more.

Q. How long since you have been connected with Lloyd Sabaudo?

A. No, not any more.

Q. How long since you have been connected with Lloyd Sabaudo?

A. Since the 28th of December, 1926.

[fol. 116] Q. Where did you take your course in medicine?

A. University of Rome.

Q. When did you obtain your degree?

A. 1915.

Q. What experience did you have as a doctor before you became associated with the Lloyd Sabaudo?

A. I was there for a year in the hospitals in Rome, and then a doctor in Rome five years, and I left the army with the degree of Captain after the war. I took part in the war.

Q. Were you certified as a doctor during the war?

A. In the Medical Corps of the Army.

Q. When did you become attached with Lloyd Sabaudo?

A. In the year 1922.

Q. Did you have to take any special examination before you became a ship's surgeon?

A. In Rome, in the year 1920, in order to be allowed to practice medicine on the ships in Italy, it is not only necessary to have a medical license and medical degree, but you have to pass special examinations in Rome, and examinations are held by the Italian Government.

Q. Do those examinations involve examinations on the requirements of the immigration laws of the various countries, as well as in medical matters?

A. Yes.

Q. So far as the laws and diseases, you mean?

A. Yes, of course.

Q. Do you recall how many took that examination at the time you did, and how many passed?

A. I think about 170, in round numbers.

Q. How many passed the examination?

A. Sixty-five or seventy.

[fol. 117] Q. When you became associated with the Lloyd Sabaudo, in what capacity did you join?

A. Pardon me?

Q. When you became associated with the Lloyd Sabaudo, in what capacity did you join?

A. As a second doctor.

Q. On what ship?

A. First, I was on the Regina de Italia, as the second doctor, and then I was transferred to the Conte Rosso, and I stayed there over four years, and exactly, I think, from the month of August, 1922, until I left the Lloyd Sabaudo, which was at the end of December, 1926. That is over four years.

Q. Were you serving as second doctor on the Conte Rosso, in the entire service?

A. At the end of the service, when Dr. Valenzi, who was the first doctor, was transferred to the Conte Grande, I was left on the Conte Rosso in the capacity of chief surgeon.

Q. And how long were you chief surgeon on the Conte Rosso?

A. About a year, but I do not remember exactly the time.

Q. Doctor, was it your duty to make any physical examination of aliens coming to the United States from Italy before embarkation at the Italian ports?

A. Yes, sir.

Q. Did the Conte Rosso sail to the United States ports continuously during the period you were in service on board?

A. Yes. Every year there was an intermission of twenty days for repairs, but the line always kept on.

Q. She came to New York, did she?

A. Yes, sir, to New York.

[fol. 118] Q. Where did you make examinations in Genoa before departure of your vessels for the United States?

A. The day previous to the departure of the ship we made examinations of the passengers in a special place called the Immigrant House.

Q. What classes of passengers were examined, in your experience, at the Immigrant House?

A. Third class.

Q. And who usually made examinations of those persons at Genoa?

A. In the Immigrant House myself, the second doctor.

Q. What was the first doctor doing at the same time?

A. He was examining the second class passengers at the office of the shipping line. They had a medical office there, and doctor's office.

Q. Will you describe briefly the examination at the immigrant house, just as persons were examined by you at the place?

A. The procedure was this: They had a bath; they had disinfecting machines for their clothing, and then they had examining rooms where the doctors examined the patients and also vaccinated the patients of the third class passengers.

Q. And the routine of the examination was——

A. Was as follows: Third class passengers were brought to the immigrant house and their clothes were taken off and were disinfected in the special disinfecting machines for clothes, and they were given a bath and their hair was then cut, and after that they were subjected to the medical examination of the doctor, who was myself. The examination consisted, first of all, of the general appearance and [fol. 119] constitution and conditions of health of the patient. And then we went into the details of the skin, scalp, nails, glands, eyes and inside of the mouth, and in the men the genital organs.

Q. Was the examination which you made of these persons——

A. And then after the examination of the third class passengers they were vaccinated against smallpox.

Q. About how long was usually occupied in making the examinations at the immigrant house of the entire number?

A. The whole day previous to the departure of the boat. By that I mean from eight o'clock in the morning until even nine o'clock in the evening and if, for any reasons, there were some passengers left, they were examined the morning of the day of sailing of the boat by the second doctor, while the chief surgeon who was on board examining the passengers, before they went on board.

Q. Was the examination which you and other doctors whom you have observed making the examinations at the immigrant house, a careful and complete examination?

A. Oh, yes.

Mr. Schulman: I object to the form of the question.
The Court: Overruled.
Mr. Schulman: Exception.

Q. State whether or not, in your opinion, doctor, these examinations were of such a character and nature that they would have revealed the existence of any disease or dis- [fol. 120] abilities which may bar the persons from admission to the United States if they had existed at the time of the examination?

Mr. Schulman: I object to the form of the question.
The Court: I will permit it.
Mr. Schulman: Exception.

A. Yes.

Q. Did you take any part in the examination of the passengers at the pier on the day of embarkation?

A. Yes. As a rule, nearly every trip—there were a very few trips when I had to go back to the immigrant house and examine the passengers that were left from the day before. There were rather few. I also have time to come back to the immigrant house and also take part of the examinations of the passengers on the pier.

Q. With the exception of the days you had to go back to the immigrant house on the day of sailing, you were present and took part in the examination at the pier?

A. Yes.

Q. Did you also take part in the examinations at the pier, which were held in Naples, before departure?

A. Yes. We did not go to the immigrant house, but both doctors were at the pier.

Q. Please state whether or not in your experience you have found that diseases, including those which are prohibited under the United States immigration laws, sometimes develop during the course of the voyage, at sea?

A. Yes, they can; any disease can. Any disease has a [fol. 121] period of incubation. It might happen that the passenger comes for the examination during that period, and you can discover no sign of the disease.

Q. Would you say as a general proposition with reference to any disease, it might develop during the course of the voyage, under such conditions which would not have been possible to have discovered it by the most careful examination before emba-kation?

Mr. Schulman: I object to the form of the question.
The Court: Overruled.
Mr. Schulman: Exception.

Q. Did you get the question?
A. No, not quite.

Mr. Tibbetts: I withdraw the question.

Q. Is it possible, with reference to any kind of disease, that it might not be discovered at the time of embarkation, but one might develop its manifestations during the voyage?

A. Yes, I am quite sure of that.

Q. I find that in this action there are involved the cases of the following aliens who came to the United States on the Conte Rosso. I will give you the arriving date, and I want to ask you whether or not you were in service on the Conte Rosso as doctor at the time these aliens were carried. They are, Eugenio Sbragia, arriving August 24, 1923?

A. Yes.

Q. I will note them all.

[fol. 122] Mr. Schulman: I ask to look at the list.

(Discussion off the record.)

Q. Giuseppe Cecconi, arriving September 28, 1923. Pasquale Guistino, arriving March 31, 1924. Giuseppe Fusco, arriving October 23, 1926. Rocco De Sanctis, arriving October 23, 1926. Leonardo Perazzi, arriving December 21, 1925.

All of these were passengers on the Conte Rosso. At the time, can you state whether or not you were in service, during your service as ship's doctor?

A. I certainly was in service.

Q. Do you remember personally any one of these particular aliens?

A. I do not think I can, because I examine so many.

Q. Can you state whether or not they were third class passengers on the date of the examination, those whose names I have narrated, in the examinations at the immigrant's house?

A. Yes, I can state definitely, because there was no way of getting out of the examination. Without exception, the third class were subjected to the same routine.

Mr. Tibbetts: Cross-examine.

Cross-examination.

By Mr. Schulman:

Q. On each occasion that you examined immigrants at immigrant house at Genoa, prior to the date of embarkation at Genoa, approximately how many immigrants did you examine?

A. In Genoa?

[fol. 123] Q. Yes, how many a day?

A. Each trip, the day before departure most of them came in from Naples.

Q. How many?

A. About three hundred, maximum.

Q. Wasn't this three hundred at Genoa a pretty likely number, frequently?

A. No.

Q. Could you say there were more times that there were a good deal less than three hundred?

A. I would say that the more often they were less than three hundred.

Q. How much less?

A. It is impossible to state that; might go over and another under. 150 to 300. Perhaps the minimum number was one hundred.

Q. You have nothing from which you can refresh your recollection as to how many passengers were examined by you at Genoa on the occasion of each voyage of the ships you were doctor on, to the United States, have you?

A. I do not quite get your question.

Mr. Schulman: Read the question.

Q. (Question read.)

A. Absolutely not.

Q. With respect to this paper which your counsel has just shown to you, and the voyages represented by those dates of arrival, are you able to state how many immigrants were examined by you on the occasion of each one of those voyages (handing witness)?

A. No, I can not. This gives only the names of the passengers. I have no way of telling the number of passengers from that.

[fol. 124] Q. With respect to the examination of the heart of the immigrant, what was the method which you employed to determine whether his heart was in good condition?

A. Heart diseases give signs. We took, as a rule, the pulse of the passenger. That is one of the signs of heart disease.

Q. As a rule, you took the pulse?

A. Yes.

Q. Were there some cases in which you did not take the pulse?

A. No, we always took the pulse.

Q. If, as a result of feeling the pulse the man appeared to be all right, was he passed?

A. That was one of the criteria.

Q. And suppose his pulse was all right, what was done?

A. I also looked at his appearance. I would tell you, another criteria is the color of the patient. For instance, I see synosis. That is another sign of heart disease.

Q. And suppose his color and his pulse were all right?

A. I looked at the general appearance of the patient. If I saw he looked like a healthy man, I did not put the stethoscope on his heart.

Q. You examined the pulse and the general appearance and the color, and if you were satisfied from those three criteria he was in good condition as to the heart, you passed him without using the stethoscope?

A. In this way: if there is no sound outside of the sound of the heart, I do not examine the patient with the stethoscope, but in the least doubt, they were examined by the stethoscope, and as a result gone over in every way.

[fol. 125] Q. How are these patients examined by you? Were they examined one by one, or do they pass before you in a line? Explain how they were examined in making a heart examination?

A. The heart examination with the stethoscope?

Q. No, just the heart examination as you customarily make it.

A. They come in groups, and then out of these groups I place them one by one and examine each one and send them their own way.

Q. When they come by one by one you feel the pulse and note the color?

A. Exactly. One stepped in front of the doctor and the other waited. When one was finally sent away, another passenger went in front of the doctor.

Q. Were these men examined by you just for the heart at one time, and then came back to you?

A. No.

Q. Your entire physical examination was made at one time?

A. The entire physical examination was made at one time.

Q. With respect to tuberculosis, what was the method that you employed to ascertain whether a man was infected with tuberculosis in any form?

A. The first criteria is the general appearance of the individual. If you see a nourished, healthy looking man, of course, tuberculosis does not come to your mind, but there are criteria. One is the same as I spoke about when I spoke about heart disease, the pulse. That not only can tell you about fever, but together with the pulse, is one of the signs of tuberculosis.

Q. One of the methods was the feeling of the pulse for tuberculosis?

A. General appearance of the patient.

[fol. 126] Q. In addition to feeling the pulse, you note the general condition of the man?

A. Absolutely.

Q. Does the state of nutrition, and so forth, in addition to those two things—as a matter of your general and regular routine, what else was done, if anything?

A. About tuberculosis?

Q. Yes.

A. You are always expecting tuberculosis.

Q. Yes?

A. If I saw any man who in his general condition of health arose the least doubt, when they are pale, or their condition is undernourished, he was put aside and examined carefully, and his chest for any respiratory sign of tuberculosis, or any respiratory trouble.

Q. You noted the general condition of the man by looking at him?

A. Yes.

Q. And feeling his pulse?

A. Yes.

Q. If his condition generally suggested no doubt to your mind, was he passed without anything further being done?

A. Other routine examinations.

Q. Only about tuberculosis, first.

A. He was passed if there was no doubtful sign in his appearance and pulse, if we did not hear a cough, he was passed.

Q. When you spoke of appearance, you mean the condition of the man as it appeared to your eyes, just by looking at him, is that what you mean by appearance?

A. Yes.

(Discussion off the record.)

Q. You say doubtful cases, with respect to tuberculosis, the man was put aside and given an examination?

[fol. 127] A. Doubtful—any passengers who showed the least suspected sign, either in the appearance or pulse.

Q. You say a further examination was given to those. What did that examination consist of?

A. Just the regular physical examination of the chest.

Q. In those doubtful cases you examined the chest?

A. Absolutely.

Q. With respect to favus and ringworm of the scalp, what was the method that you used in order to ascertain whether those conditions were present?

A. We examined the nails and the scalp.

Q. Ringworm of the scalp and favus of the scalp?

A. Yes.

Q. There is a distinction between those diseases?

A. Yes.

Q. What method did you employ to determine whether an immigrant had one of those conditions?

A. We examined the scalp.

Q. How?

A. We looked at the scalp, and especially it was very easy, because the hair had been previously cut, so the scalp was perfectly bare.

Q. Just describe what the symptoms outlined in the scalp which would make you determine that an immigrant did or did not have those diseases?

A. One of the signs is the breakage; all the hairs are generally broken, and also they are cut, before you pull them out. You can pull them out, and, of course, the scabs on the scalp, in which I knew the characteristics. I could de-

[fol. 128] termine if the disease was or was not present. With reference to favus of the scalp, the characteristics are different. You have a sort of little pimples and boils, which are also known to the doctor.

Q. You knew at about what period that disease was, these scabs on the scalp that you have described?

A. When the disease is already established?

Q. About how long?

A. What do you mean, how long?

Q. How long after the disease is established?

A. It is impossible to determine, because it is a very insidious disease. It comes by degrees. Sometimes it might take fifteen days or a month.

Q. Is there any symptom preliminary to the scabs that you can determine whether a man has favus or ringworm of the scalp?

A. Hardly.

Q. The only symptom by which you can determine that he has one of these diseases is the scab on the scalp?

A. Ringworm or favus.

Q. At any one time, were there any other signs which appear before the scabs mentioned?

A. In ringworm? It may have a special dry appearance of the hair, fragility when the hair breaks easy.

Q. You mean brittle?

A. I do not know.

Mr. Tibbetts: That is the same thing.

Q. You mean that the hair breaks easily?

A. Yes, and I know that I would make a diagnosis of ringworm.

[fol. 129] Q. Is there any other symptom which you know of to determine favus of the scalp, in case of the presence of the disease, prior to the appearance of this scab that you mentioned?

A. There may be also very slight infiltration of the scalp. I would not say that is what you call a sure sign.

Q. What do you mean by the word "infiltration"?

A. The skin, instead of having a normal character or softness, is somewhat swollen in small special spots.

Q. Is there any change of skin color?

A. It might be reddened. That can not be taken to be a sure sign of disease. If you look at me, I have no favus or ringworm or anything of the kind.

Q. In the course of your examination for favus or ringworm, if you find the hair was easily breakable, and find one of these swollen spots, reddish in color, and find nothing else the matter with the scalp, what is your practice?

A. The passenger was not admitted——

Q. I suppose such a person would taken away?

A. Absolutely.

Q. Without any further examination being made?

A. I do not personally discard the papers, and they have the right to be examined by the Commission on the pier before sailing, so in those, I put them aside and make a mark on their papers, and they have the final right to be examined again and decided by the Commission.

Q. If a red spot was discovered on the scalp, did you make a notation?

A. Absolutely.

Q. And the next examination that that immigrant would [fol. 130] receive concerning that red spot would be on the pier the next day?

A. Yes, by a commission of doctors.

Q. With respect to ringworm of the nails, what was the method that you required to discover whether an alien or immigrant had such a disease?

A. I examined the nails.

Q. What did you look for?

A. First of all, if the nail is normal.

Q. Did you just tell them to hold out the hands?

A. Yes, I told them to hold out the hands, and we looked first this way on the dorsal part of the hands, then I had them turn the other way, and I looked especially here (indicating) at the nail, the thickness of the nail, you see.

Q. As a matter of routine, did you take each finger and look at it, or look at both hands extended?

A. Extended with the fingers spread apart, and I looked at all the fingers. I examined the nails.

Q. Did you pick up the hand and look at it?

A. Yes, I took the hands of each separately, their hands in my hands, and looked at the nails, both sides.

Q. What other symptoms did you look for in ringworm of the nails?

A. You see, ringworm of the nails is characterized by an increasing of the thickness of the nails, an irregularity of part or the whole of the nail, and also a special fragility of the nail.

Q. How could you tell whether the nail was fragile?

A. With a pair of forceps; also with my hand.

Q. Did you do that to everybody or only in suspicious cases?

[fol. 131] A. In a majority of cases where I found the slightest suspicion—I let the passenger pass. If I noticed any irregularity of the nail, I stopped each passenger, and I made a complete examination of the nail.

Q. What do you mean by irregularity; what kind of irregularity?

A. It is rather hard to explain; irregularity in thickness. Instead of having that smooth surface, the nail is somewhat corrugated; instead of smooth, the opposite.

Q. Outside of the breakability and the corrugation which you have described, was there anything else which you took into consideration?

A. The nail has a sort of porous appearance.

Q. Was there any other symptom you considered?

A. About the nails?

Q. Yes.

A. Not that I can think of now.

Q. I will give you a moment to think.

A. Always the disposition of the irregularity is of importance to the ringworm. The irregularity of the nail, and the ringworm has a corrugated appearance which goes this way in lines (indicating).

Q. It was sort of creased (indicating)?

A. Yes, sir.

Q. If I understand you, in looking for ringworm of the nail, there were three symptoms, the breakage of the nail, the thickening of the nail, and the corrugation of the nail?

A. And the porous appearance.

Q. Like pores in the hand?

A. No, it is thin (indicating). Instead of being in its thickness, it is thin. The normal thickness of the nail is increased. It is porous.

[fol. 132] Q. Outside of those symptoms, those are the three things that you look for, and if the immigrant did not present those signs, was he passed by you, as far as ringworm of the nail goes?

A. Besides the symptoms there is the appearance of the whole thing which enables any doctor to make a diagnosis. You can make a diagnosis of a disease by three signs, and I have got to look at the whole appearance.

Q. What else is there to the appearance that you have not mentioned?

A. It is very important to make a diagnosis between ringworm of the nails and a traumatic lesion.

Q. Explain what you mean by traumatic lesion?

A. Suppose you have your finger cut in any way, or you strike it with a blow of any kind, it might make a modification in the appearance of the nail. It might look in some way like a ringworm of the nail.

Q. In the case of an immigrant who presented a fingernail that had a traumatic lesion, if you were satisfied in your mind that he did not have ringworm of the nail, you passed him as all right?

A. Not all of them. He was treated like any other suspect, his papers were marked and he was put aside and the next morning he was examined by the commission of doctors.

Q. Concerning the vision of the eyes, what was the method of testing the eyes of an immigrant?

A. For a disease or as far as visibility is concerned?

Q. First for disease, and then for vision.

A. We look at the eye without any lens; then we turn the [fol. 133] lids upside down and examine the upper lid and the lower lid and the conjunctiva, if there was any sign of disease.

(Recess until 2.15 P. M.)

Afternoon Session

Dr. Pietro Dandini De Sylva resumed the stand.

Cross-examination continued.

By Mr. Schulman:

(Last question and answer read.)

Mr. Tibbetts: I suggest that you speak a little bit slower, because it is rather difficult for the reporter to get the evidence.

The Witness: Thank you.

Q. Now, with respect to trachoma, what symptoms did you consider in determining whether an immigrant was infected with that disease?

A. The signs, of course, are many signs. The most evident signs are infiltration of the conjunctiva and the presence of the characteristic granulations of the conjunctiva, and particularly on the upper lid.

Q. Will you explain what you mean by the infiltration of the conjunctiva?

A. Infiltration, it is like any other tissue, it is a thickening of the tissue itself, so to speak, and a sort of swelling of sub tissue.

[fol. 134] Q. Is this symptom the only one that is present in a case of chronic trachoma?

A. Well, no, there might be other signs like adhesions. There might be also ulcers of the cornea, what we call an ectropion.

Q. Do ulcers of the cornea take long to develop?

A. Yes, the condition which brings the ulcers of the cornea up is the roughness inside; the conjunctiva rubs against the cornea and causes ulcers inside of it. I mean the causing of an ulcer of the cornea took a long time, but the coming out of the ulcer of the cornea may happen from one day to another.

In other words, the cause which produced that effect has got to act for a long time, but the effect might come at once.

Q. Will you explain just what symptom would make you suspicious that a man had trachoma so that you would make a notation to that effect for further examination?

A. The symptoms that would make me suspicious that a man had trachoma are the granulations of the conjunctiva, of the lids.

Q. Isn't there anything else besides granulations that would indicate to you as a doctor that an immigrant had a history of trachoma?

A. Might be scars.

Q. If the eyelid showed scars, or one scar, what would you do with such immigrant?

A. If there is no other sign of actual disease, one might consider the disease as cured, because the scar is not a disease itself, but it is the result of the disease. In other words, if you get a broken arm or wound, you get a scar when the wound is cured.

[fol. 135] Q. With respect to this scar in the eyelid, will you give me a description of it, its appearance?

—. It is a rather—the direction is on the longitudinal.

Q. Lengthwise?

A. Yes, it is also a rather widish shiny scar. It is rather stiff, when you handle the lids, trying to turn them upside down, you can feel with your fingers a sort of different quality of tissue, which is not the tissue of the normal conjunctiva.

Q. Would you say it would be an accurate description of this scar to say that it is pale, white, bluish colored?

A. I would not say bluish.

Q. Pale, whitish color?

A. Yes.

Q. Something like mother of pearl?

A. Yes. Let me tell you, in medicine there is nothing absolute. The color might be determined by the condition of that individual lid.

Q. But there would be no doubt aside from the color? Any doctor would know what a trachoma scar is?

A. Any doctor would not know. It requires a doctor who knows that specialty. That is not a matter that any doctor would know. You must have good training and see many of these things.

Q. There are other scars which could be present in the conjunctiva which would not be trachoma scars?

A. Yes. In the eyes of the general practitioner, also a man that has not specialized in that branch, a scar from progressed trachoma might be confused with the result of trauma.

Q. With respect to the immigrant who had just one of these scars in his lid, what was your practice?

A. My general routine, I made a mark on his paper and [fol. 136] he is left to the Commission the day after, and the Commission decides.

Q. Suppose he had several scars on the eyelids, what was the practice?

A. Same practice in sign of suspicion. It did not mean anything that it was little or much, if he was suspected, it was enough to be referred to the Commission.

Q. With respect to syphilis, what method did you employ in examining an immigrant at the immigrant house to determine the presence of that disease?

A. Also as part of the same examination of the patient. The patient comes to us and we examine all possible parts of the skin, including the face, and then we look inside the

mouth and we examine the lymphatic lobes, and then the most important part was this: that each man which came in, the examiner who examined him, had him pull his trousers down and all his genital organs were gone over. In other words, the skin of the penis was pulled down and the urethra was squeezed, the part between the head of the penis and the cylinder was carefully examined, looking for ulcers.

Q. If you did not find any indication of syphilis from the examination which you have just described, did you do anything further?

A. No, because if there was no suspected sign, and I had looked for other diseases, the patient was let pass.

Q. Outside of the examination of the lymphatic glands, and the mouth and the nose and the penis and possibly the inguinal glands——

A. Yes, and the lymph glands of the elbow.

[fol. 137] Q. Were there other symptoms that you looked for in order to determine whether syphilis was present?

A. In case of a suspect, of course, we made a perfectly thorough examination.

Q. And what was that thorough examination?

A. Nervous system and reflexes.

Q. If you did not obtain any suspicion in examining the nose and the mouth and the lymph glands and the penis and the inguinal glands and also the glands in the elbow, then you passed the man as all right, is that correct?

A. Yes.

Q. Those were the only places you looked for symptoms of syphilis, in order to first determine whether there was any suspicion of syphilis?

A. Yes, we did not do any laboratory research. Of course, we make the man walk. That is a part also of syphilis.

Q. With respect to gonococcus infection, what was the examination made to determine the presence of that disease?

A. Examined the head of the penis and squeezed the urethra, and also felt of the testicles to see if there was any sign of orchitis.

Q. That was done as a routine procedure, or only in suspicious cases?

A. As a routine procedure, because every passenger coming in front of the doctor pulled his trousers down and his genital organs were examined.

Q. With respect to the condition of the eye, ability to see, what was done as to that?

A. We pointed to somebody—we pointed to the passenger passing, or we showed him fingers in order to have an approximate idea of his power of vision; and also we made him read.

[fol. 138] Q. What do you mean, to read?

A. The papers they had, you see; a distance like this, or more (indicating). I remember I held that for some time, and I could get a fairly approximate idea of his vision. We did that also with both eyes. If I had any doubt, I just closed one eye, and I wanted to see if he could see in both eyes.

Q. Where you showed him papers to read, if you had any doubt you would take each eye separately, is that it?

A. Yes.

Q. Was this all that was done to test vision?

A. Yes.

Q. That was done at the same time that the man was examined for other things?

A. Yes. At the least suspicion the man was taken away.

Q. By "least suspicion" you mean if the man struck you as having something wrong with his eyes?

A. Suppose I showed him a paper to read, and he was uncertain, or did not look as if he could do it, I said, "Wait a minute; you get out."

Q. If you showed him a paper to read and he took it up and read a few lines without hesitation, you passed him?

A. Yes.

Q. Without any further tests?

A. Yes.

Q. Were the fingers shown as part of the general routine or in cases where he could not read newspapers?

A. General routine to read, and also, for instance, at the same time we asked him questions in order to see how he answered and in order to get an idea of his mental conditions.

Q. How did you determine the mental condition of a prospective immigrant?

A. Two ways. First of all, we kept an eye also on the [fol. 139] passenger, on the whole thing, as you know a man

with an irregular mental condition is likely to behave in an abnormal way; also in his coming to the doctor and answering questions, and then there is a preliminary fact to be borne in mind, and that is, these people before coming to me as doctor to the immigrant house, they have gone to many other people. I do not mean only doctors, but also the agents of the shipping line and immigration.

Q. I am asking you now what you did to ascertain the mental condition of an immigrant?

A. Let me come to the point.

Q. I just want to know what you did at the immigrant house?

A. Sometimes I was told that a man behaved strangely in their relation with the people that they came in contact with. My attention was especially pointed to that, and as a general rule I always questioned the passenger in order to ascertain the matters that they can understand.

Q. What kind of questions did you ask them?

A. About their families, and their job, and what they expected to do. To test the memory I asked "When did you leave your country" and "What do you do?"

Q. As a general rule, how many questions did you ask an immigrant before deciding he was all right mentally?

A. I would say four or five.

Q. About such matters as you just described?

A. Yes.

Q. If the immigrant answered those questions satisfactorily, was he passed by you as all right?

[fol. 140] A. Yes, if everything was all right in the other branches.

Q. I am only speaking as to the mentality. If he answered your four or five questions, he was passed as mentally fit?

A. Yes, if his behavior was perfectly normal in front of the doctor, besides the questions I asked them.

Q. As to the general appearance, as you looked at him, and the answers to your four or five questions, if you were satisfied with those answers, and his appearance, you passed him as all right?

A. Absolutely.

Q. You have spoken about the fact of other examinations having been held, that these immigrants have been through many people, as you put it——

A. Yes.

Q. What were you referring to?

A. To all the routine to which a passenger is subjected before coming on board, which begins in the place where they came from, until the moment they came on the job. For instance, before coming to me they were first examined by the doctor in their own country, because if there was anything patently or easy to be detected which would be liable to prevent their going to America, and, of course, the doctor would have told them right away not to try, because it was no use for them to lose any time, and for the shipping lines. The relations with the shipping line employes and with the employes of the immigration office——

Q. With respect to the shipping line employes, you do not mean that employes of the shipping line examined these people mentally and physically before you did?

[fol. 141] A. No. If anyone comes to you as a lawyer and he looks like a crazy man, you know he is crazy.

Q. As to the regular mental and physical examination that was not done by anybody for the shipping company for those third class passengers before you examined them?

A. There was first the doctor from the country of origin.

Q. That examination might be held several months at least before departure, isn't that so?

A. That I could not say. It is more of a legal question.

Q. I am asking you from your experience.

A. I could not answer; I am in no position to know.

Q. They would come with some kind of certificate from the local doctor?

A. No. Sometimes they do have certificates as to good health.

Q. In your work for the company you were not concerned with what the certificate showed, the certificate of any local doctor? You were concerned with what your own examination showed?

A. That would have no value with me. It was valuable for this reason, inasmuch as they knew they were all right, absolutely all right.

Q. According to your certificate, it has been your experience in speaking of what those local certificates show, you have found people to be diseased?

A. I could not say. I remember once there was a discovery in a case of eye disease. Shall I tell it?

Q. There is no need going into detail. As a general rule you found them to be as the certificate stated?

A. Yes.

Q. Did you examine second class passengers at any time?

A. No. That was a job which belonged to the first doctor.

[fol. 142] Q. Who was the first doctor?

A. Doctor Valenzi.

Q. The first doctor on what ship?

A. Conte Rosso.

Q. Did you examine first-class passengers?

A. No, I was not there always. We examined together all the passengers at the immigration house on the day of embarkation.

Q. Now, you have mentioned some examination by the immigration service, the Italian immigration service?

A. Yes.

Q. I think you mentioned the fact that these people who were examined by you had been examined by the immigration service of Italy. How long before you examined them had these people been examined by that service?

A. Very short time. They usually made it in Genoa. The immigrants did not come to Genoa until the day before the sailing, some times two days.

Q. You mean to say that the examinations made by the Italian immigration service, so these people could get their Italian passports, were made only a few days before they sailed?

A. I think so. That was not my job.

Q. You are not positive?

A. No, for this reason. It was not my job. I was there as second doctor.

Q. What makes you say they were examined only a few days before?

A. They did not come from their country of origin——

Q. To get their passports they could not make application in the home town?

A. No, they have to go to Genoa and get their passports, I think so.

[fol. 143] Q. Are you sure?

A. No. You asked me what makes me think so, so that is a different affair.

Q. You would not say definitely that these people had to come to Genoa before they could get an Italian passport?

A. I think so, but I am not sure.

Q. You are also not definite that in any of the cases these people were examined by the Italian immigration service only a few days prior to their embarkation from Genoa?

A. As I was telling you before, I think so. They did not come to Genoa until a day or two before sailing.

Q. Would you say that it was the fact that in many cases immigrants were examined three weeks or a month by the Italian immigration service prior to the day of embarkation?

A. No, I would not say. I am sure it is impossible.

Q. You are absolutely sure?

A. I think it is impossible.

Q. You state you think it is impossible. Are you sure that is not the fact?

A. I can not say because it was not my job.

Q. Then you do not know?

A. You asked me what I think.

Q. I am asking you what you know?

A. I answered that I did not know.

Q. In examining the immigrants at the immigrant house, were these third class passengers what are known as steerage passengers?

A. Pardon?

Mr. Schulman: Withdrawn.

Q. Were the immigrants which you examined at the immigrant house——

A. Yes.

[fol. 144] Q. —the day before embarkation——

A. Yes.

Q. —from Genoa——

A. Yes.

Q. —were they steerage passengers?

A. What do you mean by steerage passengers?

Q. I am asking you what you or what your company would call steerage passengers.

A. They were third class. It included the quota and non-quota.

Q. You would not say steerage?

A. It does not exist any more.

Q. At the time you were examining the people?

A. No, it was third class.

Q. Steerage did not exist?

A. Third class.

Q. Did you examine third class passengers at the immigration house at Naples?

A. No, we arrived in the morning at six o'clock and we left at twelve o'clock, and we made only the examination of passengers while they were coming on the boat.

Q. With respect to the examination which you have specified or testified were given to each third class passenger immigrant at the immigrant house, how long, approximately, did you spend on each individual in examining him?

A. In Genoa?

Q. Yes, at the immigrant house.

A. Say from four minutes to twenty minutes, according to what we found. If there was any perfectly O. K., the passenger was let go; if everything was not O. K., they were held.

Q. This entire general examination during the period of your direct and cross examination described was done ordinarily in about four minutes, unless there was a suspicious case?

[fol. 145] A. Yes, four or five minutes. While I was examining the hands, I was talking to the passenger. You can do plenty of things in five minutes, if you know your job.

Q. How long does it really take you to examine the heart and the lungs before you can determine if there is a condition of tuberculosis or valvular disease of the heart?

A. I would say ten minutes.

Q. Then, in other words, when you say three or four minutes for the entire physical and mental examination of the alien, you mean it was an examination in which you looked at the entire individual within three or four minutes, and you found nothing wrong with them?

A. All the examinations I described in the first part of my deposition, which is looking at the hands, at the eye lids, inside the mouth, feel the pulse, and looking at the conjunctiva.

Q. The examination, the complete examination, physical and mental, which you would make, and after which you found nothing suspicious, you passed the immigrant?

A. Yes.

Q. As all right, took only three or four minutes?

A. From four to twenty minutes. If a passenger was O. K., the maximum was four minutes.

Q. If you found a passenger to be O. K., as you put it, the entire examination you made to determine that he was O. K., would take only about four minutes?

A. A minimum of four minutes. If I saw a strong man, looking nice and healthy, it could be five minutes—go ahead.

Q. Were there many cases in which the examination was [fol. 146] less than four minutes?

A. No, I said a minimum of four minutes.

Q. You had lots of examinations of more than four minutes?

A. That is the very minimum.

Q. In case you found something suspicious, the examination would take more time, but the regular examination to determine if he was O. K. to pass, was a minimum of four minutes?

A. Yes.

Q. Did you alone examine all the immigrants passing through the immigrant house the day before sailing?

A. There were nurses and assistants.

Q. Were the assistants doctors?

A. I was the second doctor.

Q. You were the only doctor examining at the immigrant house?

A. The doctor of the immigrant office, too.

Q. Did he do anything more than supervise your examination?

A. Sometimes, occasionally, he examined passengers, if there were many and I found out I could not get through. There was also a doctor at the immigrant office and occasionally he examined some patients, too.

Q. You say he only did that where it looked as though you would not get through in time for the sailing, if you were progressing, but it was only if you would not be able to look at all these people who were going to embark at Genoa, the third class passengers, then this doctor at the immigrant house would have nothing to do with the examination?

A. As a rule, that is correct, because the job was mine, and he was there to supervise and look after it.

[fol. 147] Q. Was there a Government official in charge of the house, and you did the work of examining?

A. Yes. Occasionally he also examined passengers.

Q. When you requested it? When you thought you could not finish?

A. Yes, suppose I have to go to the water closet, he can take my place. As a rule, I was in charge.

Q. You were in charge ninety-nine per cent of the time, wasn't that so?

A. Perhaps that is too much. I was there ninety-five.

Q. You were in charge 95 per cent of the time?

A. Yes.

Q. In addition to this doctor in the immigration service, who might occasionally assist you under the circumstances you have mentioned, was there anybody else who would examine at the immigrant house?

A. That is all. In a few cases we have three doctors, a third doctor, because the Italian law, when the passengers are over two thousand, a third doctor must be taken.

Q. At Genoa for third class passengers you have stated there might be from one hundred to three hundred?

A. Yes.

Q. Where the passengers were from one hundred to three hundred, would they have a third? I am talking of what happened at Genoa?

A. If the passengers between Naples and Genoa were going to be over two thousand, the doctor would come on board in Genoa.

Q. In the immigrant house?

A. He came to the immigrant house just the same.

[fol. 148] Q. You have testified only the third-class passengers were examined at the immigrant house?

A. If they took or scheduled them for that special trip, he came to the immigrant house and helped me just the same.

Q. Under those circumstances it would not be possible for you to examine every immigrant that went through the immigrant house?

A. Yes, he was with me, but not alone, because of this: because he did not belong permanently to the shipping line, so the responsibility was mine and not his.

Q. That doctor was a consultant?

A. He vaccinated the passengers and he examined them, but he was never left alone, in charge.

Q. As I understand it, you then still performed and finally made the examinations, even though this other doctor might be there, and that was the situation during all

of the period of time that you were sailing on the Conte Rosso and on what other boat were you sailing on?

A. Regina de Italia.

Q. During the time, all the time that you were making examinations, you did examinations yourself?

A. Yes, sir.

Q. Nobody else but you did that?

A. No.

Q. Isn't it a fact that at the time the situation was that the ship's surgeon, who was second in rank on the ship which was going to sail to the United States from Genoa, and he was the one who would make examinations at the immigrant house?

A. Yes.

[fol. 149] Q. In respect to the Conte Verdi, did you make examinations?

A. No.

Q. Your examination, you say, they only had on the Conte Rosso?

A. Yes.

Q. What other ship did your examinations have to do with? A. A few trips on the Regina de Italia.

Q. And your services for the Lloyd Sabaudo?

A. I took care of the passengers during the trip.

Q. Was there any other ship of the Lloyd Sabaudo for which you examined passengers at Genoa, at the immigrant house?

A. Conte Rosso was the only one.

Q. With respect to the examination which you have stated, was made at pier on the date of sailing at Genoa, just what was that examination?

A. All the first and second class—third and second class the passengers were brought to the pier, and then they passed in front of the doctors that were commissioned. It was not only the ship doctor, but there were two ship doctors there, the Royal Commissioner and the Public Health Government doctor, and then there was also the head doctor of the Lloyd Sabaudo. He is in the office, ashore.

Q. Those people were not stripped?

A. We did not examine the genital organs, but we examined again the eyes, hands, nails and scalp and skin, and all the doubtful cases which had been called to their attention before, *which had been called to their attention*

before, and put them aside in the immigrant house. We [fol. 150] brought them apart, and those were brought into a special room and there examined, carefully and thoroughly by the whole commission, and it was decided that they were going to be stopped or not.

Q. You said at the pier you examined the scalp and fingers, so that was all examined at the pier. In other words, people who had not been reported as doubtful under the examination of the immigrant house, those people were only examined as to the eyes and scalp and fingers, or was there anything else you examined?

A. Inside the coat, and those things which you can see in a dressed passenger.

Q. Have you given a complete description of the examination that was made at the pier of these people who had not been marked as doubtful cases at the immigrant house? Was there anything else done than what you have stated?

A. The way they walked and talked and looked. In other words, it was a repeating of the same examinations we made in the immigrant house, less the examination of the genital organs.

Q. You mean that you gave them a complete examination except you did not examine the genital organs at all?

A. When they came to the immigrant house they were stripped to the upper part and have their trousers down.

Q. I am talking about the examinations at the pier?

A. The examination was the same as the immigrant house, less the genital organs, and the front of the chest.

Q. Did you examine the heart and lungs at the pier?

A. No, I did not examine——

[fol. 151] Q. I do not think you understand my question. Did you examine the heart and lungs on the pier?

A. In suspicious cases.

Q. Only in those cases which had been marked doubtful at the immigrant house?

A. Yes.

Q. Am I correct in understanding that as to the heart and lungs in all cases which had passed through the immigrant house as O. K., there was no examination made at the pier?

A. No, unless there were outside signs, as I told you. We looked at the outside appearance and took the pulse,

and saw those things that were liable to come out at the pier.

Q. Did you take the pulse of everybody at the pier?

A. No.

Q. It really gets down to this. The pier examination consisted of a general inspection given as a check up to the entire examination with respect to the doubtful cases?

A. In regard to teh nails and eyes and scalp cases especially. The eyes and nails were very carefully examined also at the pier. Naturally, the lids were turned without question upside down and inside out, and the eyes of any passenger were looked into.

Q. At the immigrant house did you use the X-ray as a routine procedure in examining the heart or lungs?

A. No.

Q. As routine procedure did you require the immigrant to bring X-ray plates of his heart and lungs to the immigrant house so you could inspect them?

A. No.

Q. As a routine procedure did you make an analysis of the urine of the immigrants so you could determine whether [fol. 152] they had this or that disease?

A. No.

Q. Did you require immigrants who were taking passage on the next boat as routine procedure to have the urine analyzed, so that you could read the report and determine whether there was a disease or not?

A. No, diseases do not only show from these signs, but from the other signs we judge that it was necessary to take laboratory tests.

Q. This whole procedure at the immigrant house and at the pier, the examination was based on the symptoms which the individual might physically show, and if there were some symptoms which you thought were suspicious, you then decided that there ought to be a laboratory analysis?

A. Yes, then the patient was sent back, the patient in case of doubt went out of my hands and I had nothing to do with them any more.

Q. That was at the pier. He was looked at once more for favus of the scalp and ringworm of the nails, and he was passed by the Commission. That passing would be without laboratory analysis?

A. Yes, but that was only in case there was any suspicion at all. You can not take laboratory analyses of every healthy person in the world. You know what I mean.

Q. This Commission at the pier, according to my understanding, only considered the doubtful cases, isn't that so? They did not examine every single person?

A. They examined every single person in regard to the disease I have told you——

[fol. 153] Q. Will you please state the things for which the entire Commission at the pier examined every immigrant?

A. The doctors of the ship and the Commission were together in the same group. The passenger came around holding his hands like this (indicating), and everybody looked at the nails very close. Then the ship doctor turned the lids upside down and showed the whole Commission his eyelids, and everybody would see, and also the scalp. Anybody could see the general healthy appearance of the passenger.

Q. That was the examination by the Commission of the healthy passengers?

A. Which had been approved previously at the immigrant house.

Q. Did each member of the Commission stand up and look into the eye of the immigrant?

A. Yes.

Q. Or just stand and look at them from a distance?

A. Very closely, to look at the eyes.

Q. With respect to immigrants who obviously indicated some physical defects, such as a lame leg, or an amputated leg, or missing fingers, what was your practice with respect to those?

A. Put aside like the others. They were observed under a viewpoint, not under the viewpoint of disease, but on the viewpoint of physical ability to work.

Mr. Schulman: That is all.

[fol. 154] Redirect examination.

By Mr. Tibbetts:

Q. I think you may have misunderstood one question on cross examination. The question in effect was whether or

not when immigrants came to the immigrant house, after having been examined by their home doctors, you usually found that they were in the condition certified by the local doctor? Do you mean to say that you usually found them in that condition?

A. Excuse me. I did not refuse to see their certificates, because I did not want to be influenced in any way.

Q. Did you sometimes or frequently find persons who had been examined by local doctors, were diseased or suffering disability?

A. Sometimes.

Q. And were quite a few rejected before embarkation on each sailing?

A. Several.

Dr. MERRIGIO SERRATI recalled.

By Mr. Tibbetts:

Q. On cross examination you were asked the question whether or not you examined physically any of the persons who are involved in this case? You answered that you did not. Now, do you wish to correct or amend that testimony in any way?

A. I understand Mr. Schulman asked me on arrival if I examined any of the passengers or immigrants on arrival [fol. 155] here. I did not. That is the job of the Federal doctor, to examine them, and I never wanted to interfere.

Q. Did you at any time examine any or all of the aliens who are involved in this case?

A. When I have a chance to see them, when they are brought back, when they are rejected, they are brought back on board the ship and examined the day before sailing or early in the morning of the day of sailing, and they are closed in places, to be sure they do not escape down into the ship's hospital.

Q. You are speaking of the time when the aliens who have been ordered deported have been placed on board some of the vessels of the company to go back to Italy?

A. Yes, then I go and see, and I have a look at them, to know how to base the protest or fine, if we have a protest to the fine.

Q. Did you make a regular practice to examine all aliens who were deported?

A. Yes. Maybe once in a while I did not do it. I did it as a general practice. I have to give the information to Mr. Caputi, on what to base the protest.

Q. Would you say that you actually examined on shipboard a large number of persons who had been deported, who were brought in?

A. Yes. Of course, it is not an examination as it might be done at Ellis Island, because the time is short. I look for cases of trachoma. I look for cases of trachoma.

Q. Did you make these examinations particularly for the purpose of satisfying yourself whether or not the diseases for which they were deported were in such a state that they [fol. 156] might have been discovered by examination on the other side?

A. Yes.

Q. What was usually your finding as the result of your examination?

A. The finding was that the diagnosis was right, the reason for the deportation was right. I never found anything to contradict the doctors of Ellis Island.

Q. As to the present existence of the disease? A. Yes.

Q. What was your finding with reference to the possibility of the existence of this disease having discovered by proper examination before embarkation? Did you agree with the diagnosis or certificate of the doctor?

A. No——

Mr. Schulman: This entire line of examination is subject to objection on the ground of immateriality, irrelevancy, incompetency, and it is self-serving.

The Court: I overrule that.

Mr. Schulman: Exception.

Q. Now let's get the question and answer.

Mr. Schulman: He is now testifying as to his difference of opinion with the immigrant authorities as to what he found, after his examination of these people before they are going back.

The Court: Of course, he had a difference of opinion. It was the result of the examination.

Mr. Schulman: There is no foundation laid to show what the condition of the alien was, or anything from which

[fol. 157] the Court can be accurately guided by the opinion.

The Court: He is giving his general opinion, general conclusions.

Mr. Schulman: I seriously doubt its competency.

The Court: I will take it.

Mr. Schulman: Exception.

Q. (Question read.) The American doctors in that respect——

A. I always doubted and always considered it rather arbitrary that the doctor at Ellis Island said that the disease could have been discovered on foreign embarkation.

Q. As a result of your examinations on shipboard, what was your opinion as to the possibility of these diseases having been discovered by proper examination before embarkation?

A. I do not think I can—my opinion, very frankly, is this: that instead of having the doctor at Ellis Island state the case could have been discovered before embarkation, the law ought to state definitely the responsibility of the company for bringing over cases. Do you know what I mean?

Q. That is not an answer that the Court can consider on this trial. The question I would like to ask you is whether or not, based upon the examinations you made of the aliens that were to be deported, it was your judgment that the disease was at such a stage that you could have certified with any degree of certainty that that disease was existing at [fol. 158] the time of embarkation, and could be discovered by proper examination at the time?

A. No, I do not. I came out to say that opinion—I mean it is to expect too much, it is to expect too much from a doctor to decide in most of these cases, and state in most of these cases that the disease or defect could have been discovered before embarkation.

Q. Do I understand correctly then that it is your opinion in these cases, or the great majority of them——

A. Yes.

Q. —a doctor could not certify with any degree of certainty that they could have been discovered before embarkation?

A. Yes.

Mr. Tibbetts: That is all.

Cross-examination.

By Mr. Schulman:

Q. You personally wrote many of the letters which were written to the Secretary of Labor, protesting the imposition of fines against the Lloyd Sabaudo?

A. Signed, not write them.

Q. Do you approve of the contents of the letters before you sign them?

A. Yes, I read them.

Q. After reading those letters which were written to the Secretary of Labor in all of these cases in response to fines imposed by the Secretary, you were satisfied that they fully presented the company's case for the remission of the fines?

A. Yes.

Q. With respect to the fourteen or fifteen aliens who are involved in this case, am I correct in understanding that you [fol. 159] did not personally examine them when they embarked from Genoa or Naples?

A. No. Every year I go to Italy, and I always go to Naples and Genoa to see how things are carried out.

Q. These people and all the immigrants coming there, you did not personally examine as the doctor for your company on the other side?

A. No.

Mr. Schulman: That is all.

By Mr. Tibbetts:

Q. In answer to Mr. Schulman's question, as to whether or not the protests which were submitted set forth the case satisfactorily in your opinion, do you mean to say that you there set forth all the evidence that might have been available of the examinations and precautions that had been taken in these cases?

A. I do not get you.

Mr. Tibbetts: Strike it out.

Q. In presenting the protest to the Secretary of Labor in these cases which are on file, did you attempt in those protests to set forth the complete evidence of all the precautions that were taken by the company, or did you merely

state facts to the effect that medical examinations were made, and leave it at that?

A. Yes.

Q. Did you consider that you put before the Secretary a complete statement of all precautions which might have been shown?

[fol. 160] A. I do not get your point.

Q. That is a little difficult to express.

A. I always considered it for granted that the Government knew that examination of the immigrants on the other side was made in the proper way, in the best possible way.

Q. Is it true: that in making these protests you set forth those matters very briefly what you assumed the Government already knew about the course of the examinations conducted on the other side?

A. Yes, because the American Government is the Federal Government on the other side, to see how things are getting along, and I am sure that those doctors report to their consuls how things are getting along in the situations or immigrations in Italy, and the consuls make reports to Washington.

Q. Were there American Consuls located at Genoa and Naples?

A. Yes, American Consuls.

Q. Were there American doctors attached to the Consulate at these places?

A. Yes.

Cross-examination.

By Mr. Schulman:

Q. In speaking of American doctors, isn't it a fact that there were not any surgeons of the United States Public Health Service attached generally in leading ports of Europe until August, 1927?

A. Yes. Before 1927 there was a Dr. Wing in Genoa, and Dr. Stewart in Genoa, and other doctors, I do not remember, stationed at the American Consulate.

[fol. 161] Q. What years was Dr. Wing in Genoa?

A. Dr. Wing was in Genoa approximately in 1925 and 1926. Dr. Stewart at present is in New York. He was stationed in Genoa.

Q. Isn't it a fact, doctor, that these American doctors who were abroad, had nothing to do with these examinations of immigrants which Dr. Dandini has testified about, but were merely at the American Consulate for giving the ship people help with respect to the quarantine of diseases such as scarlet fever, and so forth?

A. Yes, I saw Dr. Wing and Dr. Stewart many times at the embarkation of immigrants at the dock, and looking and considering very well the examination of the immigrant. I know these doctors. It is impossible for the Federal doctors, with the instructions of the American Consuls abroad, having to report to Washington on everything in matters of commerce or matters of sanitation or immigration that can be applicable to the application and the enforcement of the laws of America. It is impossible for these doctors not to give regular reports to their Consul, and the Consul passes the reports to Washington. That is the basis of all the Consular service of all nations.

Q. You are not going to say that these American doctors were present at the immigrant house every time that a group of immigrants was examined?

A. No.

Q. Are you going to say they were present every time the immigrants were examined at the pier?

A. No.

[fol. 162] Q. It was not their function to have anything to do with the examination?

A. No.

Q. With respect to the presence of these American doctors, was it their duty as representing the United States to look for an epidemic and quarantine the disease?

A. Yes.

Q. They have to make a report in certain ports of Europe that there was a cholera or typhoid epidemic, and the United States could consider whether they would let individuals come into the country from that port?

A. Yes.

Q. They were representative of the United States Government in a general way, to bring news from those quarantines, epidemic diseases?

A. Yes, sir.

Q. Isn't it a fact that there are many diseases which are not of a quarantinable epidemic nature?

A. Yes. At the same time, there is, for instance, typhus in Naples. There are cases of typhus, quite often, when the probable interest that the Federal Government Public Health Service is delousing immigrants. It is impossible for the American doctor generally to make a practice to see that all of the services of the immigration house work in the proper way, and passengers would not be examined carefully, to see that any possible sign of skin trouble, lice, or vermin, were on the passengers, in order to keep the typhus from coming to the United States.

On the 11th of June there is a circular that came from Washington to all steamship lines to intensify the examination of immigrants on the other side.

[fol. 163] Q. That is just the other day?

A. Yes.

Q. Then as I understand, these American doctors who were over there were there for sanitation purposes, to see that groups of aliens should not come to the United States infected with lice and vermin of all descriptions?

A. Yes.

Q. It was not a function of theirs to supervise the examination of immigrants coming to the United States with respect to the physical or mental condition which would have a bearing on their admissibility into the United States?

A. Coming down from typhus, which is a quarantine disease, there are infective diseases which are important also. So trachoma is infectious; tuberculosis is an infectious disease, and syphilis is an infectious disease. It seems impossible to me that the immigrant——

Q. I want your statement as to the fact of what the function of these American doctors was. I am asking you was it the function of these American doctors abroad to examine immigrants for heart disease, for tuberculosis, for syphilis, for any of the diseases by which the alien is excluded? Are you going to say that is their functions, or that they did that?

A. No.

By Mr. Tibbetts:

Q. Your point is this: American doctors were there throughout this period. They had functions to perform at

the immigrant house, they were frequently at the pier, and consequently saw the examinations that were being carried on.

[fol. 164] Mr. Schulman: I object to the form of the question. He is putting the answer into the witness's mouth.

The Court: The American doctors were coming from time to time down to where the medical examinations were made of the alien immigrants, and knew in a general way what was being done by the Italian doctors in the way of examining the prospective immigrant, but they did not attend there every day, and they did not attend to the details of the examination.

The Witness: No.

DANIEL A. CAPUTI recalled.

By Mr. Tibbetts:

Q. You stated in your previous examination that the total number of immigrants coming to New York on the Lloyd Sabaudo line, who were rejected for medical reasons, that is, disease or disability, was 116, I believe?

A. That is right.

Q. Are you now able to compute the total number of fines which have actually been imposed upon the Lloyd Sabaudo on account of rejections for disease or physical disability?

A. Yes.

Mr. Schulman: I object to the question as incompetent, irrelevant and immaterial. It has no bearing on the issues [fol. 165] in this case.

The Court: I overrule the objection.

Mr. Schulman: Exception.

Mr. Tibbetts: I think it is proper as to whether or not they imposed a fine.

Q. How many fines were imposed for those reasons?

A. 103.

Q. Were some of those fines imposed, notwithstanding the fact that the alien was eventually admitted?

A. No.

Q. And not deported?

A. Yes, a few of those people who were admitted.

Q. Taking those into account, approximately what number of fines were imposed against the total number of rejections in the first instance?

A. I should say about 125 rejections in the first instance, and 103 fines imposed.

Mr. Tibbetts: Cross-examine.

Cross-examination.

By Mr. Schulman:

Q. Mr. Caputi, was there ever a case that your company had with the Secretary of Labor in which they did not contest the imposition of a fine?

A. No.

Q. They have contested every one of those?

A. To the best of my knowledge.

Q. All 116 were contested?

A. Yes.

Q. That was out of a total of 99,000 aliens brought to the United States?

A. 99,000 over a period of nine years.

[fol. 166] The Court: 116 aliens rejected, and in 103 of those cases fines were imposed?

Mr. Tibbetts: Yes, 116 deportations, and 103 fines were imposed out of the number rejected.

The Court: Leaving 13 cases in which people were rejected but no fine imposed?

Mr. Tibbetts: They may have never given notice of the fine, where no attempt was made to impose a fine.

The Court: The question was 103 cases, and the witness answered yes, they did contest 103 fines.

The Witness: That is not exactly right.

By Mr. Schulman:

Q. Did you protest the 116 cases in which there were deportations, in which there was no trouble because of disease?

A. Every notice that we received from Ellis Island, I should say it is 116. Perhaps in some of these cases they did not send us a notice and there was nothing to protest. If we got 116 notices, we protested every one of them, to

my knowledge. I know in 103 cases we had an imposition, where the Secretary decided against us.

Q. Where did you get your figure of 116 from? Earlier in the testimony you were the one that brought out that figure.

A. Yes.

Q. Where did you get that figure?

A. I keep records of all people arriving, deported.

Q. From the fact that 103 cases were fined, and protested, 13 cases were either not dealt with by the Govern-
[fol. 167] ment, as far as fines were concerned, or the fines were remitted, or else they thought they were not imposed upon, is that a fair inference?

A. Yes.

Q. Approximately as to the one-ninth of your total number of cases in which you had no trouble with the Government because of disease or physical disability of aliens, there was either no imposition of fine or a remission of fine?

A. Yes. In some cases the doctors certified whether or not a notice, of fine was sent out, depending upon the certificate issued by the doctor at Ellis Island. In some cases the doctor certified that in his opinion it was not proper for them to certify that the condition existed at embarkation. In those cases I think they were deported, and we got a fine notice.

Q. There were instances where the alien would arrive with an excludable disease, and the Public Health Service would certify the condition could not be detected by competent medical examination abroad?

A. Yes.

By Mr. Tibbetts:

Q. Were they few or many?

A. Very, very few.

[fol. 168] Joseph E. Lynch, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Tibbetts:

Q. What is your residence, Mr. Lynch?

A. 1613 Harvard Street, Washington, D. C.

Q. Have you had occasion to practice before the Department of Labor in Washington, in immigration fine cases?

A. I handled immigration fine cases under the name of James I. Parker, from August, 1922 to September, 1926. During the last eighteen months of that time he had two strokes of paralysis and was not in his office, I should say not over three or four weeks during the eighteen months. That was from February, 1925, to September, 1926.

By the Court:

Q. Was he a lawyer?

A. Yes.

Q. Are you a lawyer?

A. No, sir, I am not. We do not have to be admitted to the bar to practice before the Labor Department.

By Mr. Tibbetts:

Q. After the death of Judge Parker, did you continue in the same practice?

A. No, we turned it over to another attorney.

Q. Your last experience before the department was in 1926?

A. Yes.

Q. Will you name some of the lines that were represented [fol. 169] by Mr. Parker alone, in which you assisted, or under your care of the work?

A. Navigazione de Italiana; Fabre Line, Cosulich Line, North German Lloyd Line, Hamburg American, Cunard, National Greek Line, Baltic America, Norwegian America, Scandinavian Line.

Q. How did you handle the cases that were presented by you and Judge Parker to the Department of Labor?

Mr. Schulman: I object.

Q. What sort of evidence did you put forward?

Mr. Schulman: I object to the question calling for an answer that would be incompetent, irrelevant and immaterial.

Mr. Tibbetts: I am trying to get at the nature of the practice and the character of it that would be receivable.

The Court: Do the records show that?

Mr. Tibbetts: I think so. I would like to have a witness who has had regular experience. This witness had a regular practice of going into the Secretary's office and had discussions with the proper officials. They are the cases he has told me about.

The Court: Did he testify before in the other cases?

Mr. Schulman: Yes, and objections were made in the companion case.

The Court: I will take the testimony for what it is worth, subject to a motion to strike it out.

[fol. 170] Mr. Schulman: It is evidence that the plaintiff——

The Court: I am inclined to agree with you on the law. There may be some point in it. I will take it for what it is worth.

Mr. Schulman: Exception.

The Court: We might strike it all out later. I am inclined to agree that the records speak for themselves.

The Witness: The way the cases were handled at the time, when the notice of fine was served, the line had sixty days in which to protest. Some of the protests were prepared in our office and then filed with the Commissioner of Immigration by the Line.

Some of the other lines prepared their own protests, after the case was submitted over in Ellis Island, it was sent to Washington, and the attorney of record notified. We then prepared a written proof and statement, and in the case pointed out why we felt the law did not permit the imposition of the fine, and we filed these briefs personally with Captain Browning, who was then handling the fines work for the Immigration Department. At the time he was the only clerk or official—he was the clerk or official primarily passing on the cases.

Q. Did you make any personal appearances?

A. Every case was filed with Captain Browning personally.

[fol. 171] Q. Can you state what nature of proof was submitted before the Department in such cases, during the time that you were practicing before the Department?

A. In which kind of case?

Q. Cases involving fines against you at the time of the rejection, for medical reasons?

A. I only have a vague recollection of one or two or three cases where the fine was remitted.

Q. What character of evidence was received, whether by witnesses on questions and answers, or by written documents, or oral statements?

A. All the briefs were supported with statements, most of them just statements as to the precautions taken by the line in Italy and all European countries before the embarkation of the aliens. Some of them had medical certificates, some statements that such precautions were taken.

The Court: Statements by the lawyers?

The Witness: Yes, or official of the line in New York.

Q. Can you state whether or not the Department accepted as statement of fact such statements as you have mentioned, even though unverified?

A. It is easier to say what they stated in the fines in the cases. They would see the points stated by the attorney, and the lines were given due consideration, so I assume they were accepted by the Department.

Q. Can you tell how many cases you appeared in or assisted Judge Parker in before the Department of Labor involving cases in which fines were imposed for disease or physical disabilities?

A. I would not want to make any definite statement. I [fol. 172] probably could verify that from the records in New York. When Judge Parker died, the records were destroyed, at least two hundred.

The Court: Did you or Mr. Parker ever represent the plaintiff in this action, the Lloyd Sabaudo?

The Witness: No.

Mr. Tibbetts: I think all the other Italian lines but not this line.

Q. State as nearly as you can, how many times you have been able to get fines remitted where notice of fine is given on account of disease or disability?

Mr. Schulman: I object to the question as calling for an answer that is incompetent, irrelevant and immaterial.

The Court: I will take it.

Mr. Schulman: Exception.

A. As I said before, I have no way of definitely stating how many were gotten, but I recall, I think, three cases, I

should say not over ten or twelve of all the medical cases, were remitted, and in those cases certificates of examining doctors from the other side, either before the alien embarked or after they went back and were examined by specialists, were submitted.

Q. After the alien had returned to his own country, there was had an examination by specialists?

A. Yes, I recall two or three trachoma cases, and one [fol. 173] ringworm of the nail, where they were examined by specialists in that line in Europe.

Q. I believe you stated Captain Browning of the Department of Labor primarily passed upon all, or a majority of such cases?

A. He wrote all the decisions, subject to approval by the Commissioner General of Immigration.

Q. Is he the man with whom yo uusually had your negotiations in these cases? Did he ever make any remarks to you indicating his disposition in dealing with these cases, as to the number of fines that he was imposing or expecting to impose?

Mr. Schulman: I object to the question on the ground it is incompetent, irrelevant and immaterial.

Mr. Tibbetts: There is a very startling statement that Captain Browning made that I think might be withdrawn.

The Court: This is pretty remote. This witness never even represented the plaintiff in this case.

Mr. Tibbetts: I will state to your Honor what I understand the witness would say. He said that he was shooting at a million dollars of fines.

The Court: Answer the question. I will probably strike it out.

Q. State what Captain Browning said to you?

A. During the fiscal year 1925, Captain Browning told me, I should say at least ten or twelve times possibly more, [fol. 174] that he was shooting at one million dollars in fines against the steamship companies during that year.

Q. You are not employed in any way by the plaintiff in this case?

A. Yes, we represent the Lloyd Sabaudo in Washington, but it is part of our regular——

Q. Through the Conference?

A. Through the conference, and also bring——

Q. Your business is the giving of corporation news service?

A. Yes, to the steamship lines, or to anybody who represent steamship lines.

Mr. Tibbetts: Cross-examine.

Cross-examination.

By Mr. Schulman:

Q. You testified in the case of Navigazione Generale Italiana v. United States about three or four weeks ago, didn't you?

A. Yes, I did.

Q. It is my recollection that you also represented the Navigazione Generale Italiana as counsel before the Department of Labor?

A. Yes.

Q. Just how do you represent this present plaintiff? Do you represent it in any legal capacity?

A. No. I would not call it a legal capacity. We give them information on bills introduced in ships, action of the Shipping Board, rules and regulations of the State and Labor Departments regarding passports, permits, and so forth, and assist them in getting passports, and re-entry permits.

Q. Are you compensated for that representation by the plaintiff?

A. Yes.

[fol. 175] Q. Just when did Major Browning make the statement that you have testified he made to you?

A. On repeated calls during the fiscal year 1925, and again in 1926.

Q. Did he make the statements once or more than once?

A. As I say, I would say ten or twelve times. I do not think I would exaggerate if I said forty-five or fifty.

Q. Just what was the occasion of his making that statement?

A. Just as a threat, more or less, that they were after the lines, I presume, and wanted the lines to be more careful. I do not know what was in his mind.

Q. You claim to have had a very thorough understanding, however, and experience and practice before the Department of Labor?

A. Yes.

Q. Are you up on the statistics with respect to the barring of aliens by the Department of Labor, and the number of fines imposed by the Department of Labor?

A. I am.

Q. Over a period of years?

A. Yes.

Q. Was there any year in which one million dollars was imposed prior to 1925?

A. I do not recall. I think the year to which I refer it was $744,000.

Q. What year?

A. Fiscal year 1925.

Q. And that represented companies bringing in all kinds of aliens from all the ports of the world to the United States, is that so?

A. Yes.

Q. It is true that those were fines of $250, $500 and $1000, isn't that so?

A. Yes.

Q. Are you able to state what the immigration to the United States was in the year for which you have just [fol. 176] testified the imposition of fines was $744,000?

A. The immigration for that year was about 744,000, I believe. That includes people coming over on a visit, returning aliens and quota immigrants.

Q. You say the number was about?

A. $743,000.

Q. In that particular year the fines ran to a dollar to every one thousand aliens?

A. I do not know. You can get that from the annual report.

Q. On the simple mathematics of it, that number of fines would not even run one to the thousand. You said $740,000, and about 740,000 aliens came into the United States that fiscal year?

A. Over fifty per cent of those aliens came across the border.

Q. Those are not finable cases?

A. No.

Q. How many came across the border?

A. I do not recall the figures. I think approximately fifty per cent came across the borders.

Q. You said Major Browning made that statement to

you as a threat. Just what was the first occasion on which he made that statement to you as a threat?

A. I do not know. I do not know between the first and the last; when I go over there and talk to him about different statements.

Q. That was a very startling statement?

A. Yes.

Q. Didn't it make enough of an impression to enable you to identify what part of 1925 he made that statement?

A. No, he made it so often.

Q. He made it to you every time that you came to the office.

A. No. I was in his office three hundred times and even [fol. 177] sometimes more. I was in the office three and four times a day. His typewriter was in the corner and his desk was there, and he spent the day there.

Q. How well do you know Major Browning?

A. Very well.

Q. How long have you known him?

A. Since 1921.

Q. Isn't it a fact that you are a very good friend to Major Browning?

A. No more than any other individual. We were all good friends. No more than any of the other Department of Labor officials.

Q. He is a friend of yours?

A. He is a friend of mine.

Q. When he made the statement to you, did he make that to you as a threat?

A. I think he made it as a threat to the companies, to notify the lines to be more cautious.

Q. Did he say irrespective of merit one million dollars worth of fines were to be imposed for the fiscal year of 1925?

A. I did not say that. I have my own opinion.

Q. Did he say that to you?

A. No.

The Court: Was he out to make a record?

The Witness: It would appear so.

Q. Did he say to you, irrespective of a proper showing by the companies, they were going to impose those fines?

A. No. I will give you the understanding I had with him.

Q. Just answer the question. I am asking you what Major Browning said to you. I do not want any samples [fol. 178] unless it is a specific occasion on which Major Browning spoke to the witness.

A. I recall two specific cases.

Q. State just what he said to you.

A. On one case, I recall the Fabre Line, a man and his wife had trachoma, over from Portugal. That fine was ordered assessed. I went first to the Commissioner General of Immigration and pointed out that that man came here as a temporary visitor, and that he must have made a statement of his intentions of coming here before the Consul. That was after 1924.

The Commissioner General referred me to the then assistant, John Tolman, and Captain Browning. All I was asking was that they notify Ellis Island to hold up turning the money into the Treasury, until such time as I could get additional information from abroad. This was first denied, and about ten minutes of five on Saturday afternoon they said they would hold up the case, but regardless of what I would present, the fine would be imposed.

I wrote the Fabre Line and told them to get the statement abroad as to the statements made to the Consul. They got copies of the affidavits made by the alien before the American Consul, which I submitted to the Department, and they changed their mind and admitted the alien.

They told me regardless of what I presented, the fine was going to stick.

Q. In that case the fine did not stick?

A. They were trying to prejudge.

Q. You got your relief by showing you were entitled to it?

A. After much argument.

[fol. 179] Q. You got a fair and square deal out of that case?

A. Yes. I think the decision was decided not by the two men, but by Mr. Husband.

Q. You got additional time to present additional evidence?

A. The fine had been imposed.

Q. They imposed the fine and they gave you additional time in which to effect the remission?

A. Admitted, but not all cases went through like that.

Q. You would not say that in others of your cases before the Department of Labor, where a fine has been imposed, and you have asked for an opportunity to submit additional evidence, and in every case they denied it?

A. I do not think so. I think that was the only case where they reopened and permitted me to submit additional evidence.

Q. Will you go as far as to say that in your practice in the Department of Labor in every one of your cases they imposed a fine without giving you an opportunity to present evidence?

A. No.

Q. They imposed the fine and reopened?

A. Yes.

Q. How many other cases were there like that in your experience?

A. None that I can recall.

Q. How many cases of fines imposed without a hearing, without giving you a hearing?

A. As a general proposition, they are pretty careful in notifying attorneys.

Q. You are an expert in this practice. I am just asking you in how many cases, in your cases, they have fines without notice and refused to reopen the case?

A. I do not know.

[fol. 180] Q. Was there in any case except the one you just described?

A. We were present and protested in those cases first.

Q. Even in the cases in which you were fined you were present and protested, and they denied it, and then they reopened it?

A. Yes.

Q. You have had an opportunity to protest, and have hearings in all cases where they imposed the fine, they reopened the case?

A. They reopened and we got them. I did not expect to get at the time that we could get at the Government records in every case. We would be in a better position to have them refused.

Q. With respect to this present plaintiff, the Lloyd Sabaudo, did Major Browning ever say to you that he was shooting at fines from this particular company?

A. No. Why should he?

Q. Do not ask me. I am just asking whether he said that to you?

A. We never represented them. There was no use of his referring to the Lloyd Sabaudo.

Q. And did not represent the other line that had the fine trouble?

A. No. He did not point out any particular line in any of those conversations.

Q. As to this plaintiff, he did not say they were shooting at fines against this plaintiff?

A. No.

Q. Isn't it a fact that Major Browning is only a subordinate who prepared the memorandum, and that there has to be final action before the fine is imposed?

A. Yes.

Q. Did the Secretary of Labor ever tell you they were shooting at one million dollars of fines?

A. No.

[fol. 181] Q. Did the Commissioner General of Immigration tell you that?

A. No.

Q. So the only one that told you is that good friend of yours, Major Browning?

A. He told it there in the general conversation.

Q. Of course, you say it was told to you?

A. Yes, it was.

Q. How many cases did you have before the Department of Labor in which fines have been imposed and you did not get your relief?

A. I can not answer that question.

Q. One hundred?

A. Three or four hundred cases, easily.

Q. In which you personally have tried to obtain remission of fines and did not get your relief?

A. Yes.

Q. Do I understand that you also represented this lawyer, Mr. Parker, you acted in his cases, too?

A. I was his assistant.

Q. When you are talking of your cases, do you talk of

your own cases or his cases in which you were acting as assistant?

A. They were his cases.

Q. A number of those cases were pending before he was deceased?

A. We turned the work over to A. Warner Parker, September 1, 1926.

Q. Prior to that time, which Parker did that work?

A. James I.

Q. Isn't it a fact that James I. Parker represented the Navigazione Generale Italiana Line in many of those fine cases?

A. Yes.

Q. You did not get relief in a large number of those cases?

A. That is right.

[fol. 182] Q. All those cases have been taken into court, to your knowledge?

A. I do not know. I was here last month.

Q. Now, you have spoken about the evidence which was received by the Department of Labor, the statements by counsel. Did anybody in the Department of Labor tell you that you should write a letter in which you set forth the grounds of your protest, and what you considered to be the material facts, that you would be given relief? Did anybody tell you that?

A. No. They would be given consideration. They would have their hands tied, if they made a statement like that.

Q. Did they say that is the best evidence you can offer?

A. No.

Q. Did anybody say to you that would be considered by any official of the Department of Labor, would be considered as the best type of evidence for a steamship company to offer in protesting those cases?

A. No.

Q. They said they would consider it?

A. They said they would consider all statements of aliens on their protests, and the statements of Washington attorneys have been given due consideration.

Q. In other words, if you submitted such letters and nothing more, they would at least look at the letters and consider them and take them into consideration?

A. Yes.

Q. If you chose not to offer anything more, isn't that what the practice was before the Department of Labor?

A. I suppose so. They always said they considered our letters and we kept on putting them in.

[fol. 183] Q. You have been in court? Were you in court during the trial of the Navigazione case?

A. Yes.

Q. Did you hear the doctor testify on behalf of the company?

A. No, that was in chambers.

Q. Did you hear the doctor testify?

A. No.

Q. In any of their cases which you handled in your practice, did you attempt to offer to the Department of Labor the type of evidence that is being offered in this court, the statements of doctors who examined the people?

A. Like statements, we got statements——

The Court: A doctor go down there and answer questions orally?

The Witness: No.

Q. Of those ships calling at the port of New York, from 1922 to 1928?

A. Yes.

Q. You know that those doctors travel on those ships?

A. Yes.

Q. In your practice representing the Navigazione Generale Italiana, did you ever ask the Department of Labor for an opportunity to present the doctor because he was in port?

A. No.

Mr. Schulman: That is all.

By Mr. Tibbetts:

Q. Did the Secretary's office ever notify you to bring the doctor there or give their proof by affidavit?

A. No, sir.

(Whereupon an adjournment was taken until June 19, 1930, at 2.00 p. m.

[fol. 184] New York, June 19, 1930—2.00 p. m.

JOHN W. BROWNING, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Schulman:

Q. What is your occupation?

A. Civil service employe, Department of Labor at Washington, D. C.

Q. How long have you held that position?

A. With the Department for nine years. Previously I was in the field, was in the United States Army.

Q. And how long were you in the United States Army prior to your employment in the Department of Labor?

A. A little over three years, nearly four years.

Q. Have you been employed in the Government service for more than twenty years?

A. For more than thirty years.

Q. You are holding the rank of Captain in the United States Army at the present time?

A. At the present time I am on the retired list.

Q. Do you know Mr. Joseph E. Lynch?

A. I do.

Q. Just how did you come to know Mr. Lynch?

A. Mr. Lynch at various times has represented certain steamship companies in connection with administrative fines that have come before the Secretary of Labor under the various provisions of the Immigration Acts.

[fol. 185] Q. Have you, in the course of your employment in the Department of Labor, had conferences or discussions with Mr. Lynch about steamship company fine cases in which he was interested?

A. I have.

Q. In the course of your conferences or discussions with Mr. Lynch, did you at any time ever say to him that you were shooting at one million dollars for fines, and that thereby you would keep the steamship companies from bringing over a bunch of aliens who were inadmissible?

A. I never made any remark about shooting for one million dollars in fines.

Q. Did you ever state to Mr. Lynch that the Department of Labor was shooting at one million dollars for fines?

A. I never did.

Q. Did you ever make any such statement with respect to the fiscal year ending 1925?

A. Not that year, or any other fiscal year.

Q. Did you ever discuss the fine situation with Mr. Lynch at all?

A. Oh, yes, in the course of business, frequently.

Q. Will you state in substance, briefly, the nature of your discussions with Mr. Lynch concerning the fine situation?

A. I do not believe that I could give any real history of it.

Q. I mean in a general way, according to your recollection, whatever you may have thought in a general way.

Mr. Tibbetts: I object to that on the ground it is too general and does not have any application to this case.

Mr. Schulman: I withdraw the entire question.

[fol. 186] Q. Now, are you familiar with the practice under which steamship companies would write to the Department of Labor in steamship fine cases?

A. Yes, sir.

Q. Are you familiar with the protests written to the Department of Labor in cases in which Mr. Lynch was the steamship company's representative?

A. I have seen many of them.

Q. Did you ever state to Mr. Lynch that those protests in letter form would be received by the Department of Labor as evidence?

A. No. They are not evidence. I have not made any such remark.

Q. Will you state briefly what your functions were in the Department of Labor during the period of 1921 to 1928, inclusive, with particular reference to the handling of steamship fine cases?

A. It was about the middle of June, 1921, when I was assigned to the duty of taking initial action in such matters as came before the Department in connection with administrative fines under the various provisions of the immigration acts.

Between 1921 and 1923, that work was a part of the Law Division work of the Bureau of Immigration, and the in-

structions to the field with regard to the imposition or remission of the penalties were written up in the Law Division, dictated by myself, and forwarded through to the Commissioner General of Immigration for his signature, and then to a Department officer, a secretary or assistant Secretary of Labor.

After being signed by the Department officer, such letters [fol. 187] were the decisions, and they generally became the decisions after the Secretary's signature was placed thereon.

These letters were checked, first of all, by the chief of the Law Division, and then by the Commissioner General or assistant Commissioner General, and then by the Department officer.

About the middle of 1923, I was removed from the Law Division and made a separate division, with headquarters adjoining those of the Commissioner General of Immigration, after which time my memoranda or letters were no longer checked by anyone after leaving my desk, until checked by the Commissioner General, or assistant Commissioner General, and later by the Departmental officer.

On June 18, 1926, my work was transferred to the Board of Review, where I functioned under the direct supervision of the Chairman of the Board, who was in constant touch with the Departmental officers.

After June 18, 1926, my initial action no longer went through the Commissioner General's office, but to the Board, the signature of the Chairman of the Board, and all Departmental officers, before becoming a decision.

In the course of that work from 1921 to the present time, there was a healthy reaction, in that many decisions were set aside by those in superior positions to myself, disagreements being not unusual, being threshed out before the assistant Commissioner of Labor, whose decision was final.

In doubtful cases, the decision was initialed on some actions by one of the assistant Secretaries, without action [fol. 188] being first taken by the Board of Review.

I have no information as to the number of instances in which there were reversals of opinion superseded in my original memorandum or letters, but such reversals or criticisms were not at all infrequent.

Were there more details you wished?

Q. I think you have given a very comprehensive statement. I wish to ask one question about the word, initiatory. You mean that frequently the recommendation which is made by the higher official is taken.

A. As the fine cases come before the Department, they are sent to the Board of Review and laid upon my desk there. If a Washington attorney is interested, they are referred first to him for his review, and if no attorney is interested the action is taken by making a memorandum, after having put the plea before the Board of Review.

Q. In the course of your initiatory letter, as you call it, would it be common practice to have discussions with the attorneys representing the steamship companies?

A. Up to June 16, 1926, that was the common practice. Since then that has not been, as the Secretary does not allow any individual member of the Board to discuss cases with attorneys, except as the Board is sitting, and the attorney is representing his client.

Q. What was the purpose of these conferences or discussions between you and representatives of the steamship companies?

A. To point out such equities as the company wished to have considered, and should have been embraced in the petition or plea, to make sure, from the company's standpoint, [fol. 189] I did not disregard or give undue or too little weight to any of the bits of evidence presented.

Q. By plea, do you mean the letter of protest which the steamship company would write to the Department of Labor?

A. I refer to the plea as offered in the letter by the steamship company, and it might also apply to the verbal discussion which merely pointed out the information or points in the petition or plea.

Q. Did you at any time ever threaten Mr. Lynch that you would impose fines on steamship companies in order to teach them a lesson?

A. No.

Mr. Schulman: That is all.

Cross-examination.

By Mr. Tibbetts:

Q. Do you remember whether you ever made any remarks to Mr. Lynch regarding the amount of fines that you thought were going to be imposed in a given year?

A. No, I have not done that. The fine notices are served at the ports. I have no way of knowing how many fine notices are to be served in the different ports of the United States.

Q. Do you know how many are imposed?

A. After the year is over, but not with regard to the future.

Q. I mean you always would know of the imposition of a fine, wouldn't you?

A. Yes.

Q. So you would be able to make some estimate of the number that might be imposed during a year, based on what [fol. 190] had been assessed in the past?

A. I do not see how one can do that, because they come in so very irregular.

Q. According to your recollection, you never made any such statement to Mr. Lynch with regard to the amount of fines that you expected to be imposed in a given year?

A. I could not have done so; I have not done so.

Q. As I understand, you wrote up most of the opinions in administrative fine cases?

A. Yes.

Q. Will you please glance over this list of records and see whether you wrote the opinions in these cases (handing witness)?

Mr. Schulman: I object to this testimony as not proper cross examination. The witness has not been asked any question which opens the door to such cross examination.

The Court: I think so. I will permit it.

A. This first one, 430, sub. 398, bears my initials, and I recognize it as one of mine.

Q. Just simply state whether as a fact you did write up both opinions?

Mr. Schulman: Just look at each one, and segregate them, please.

A. In these first two, I did. In the third one, 445-410 my original decision was reversed, as you will notice by the array——

Q. You had decided that no fine should be imposed and the Department nevertheless said there should be?

A. That is my dictation. I know in that case, because of [fol. 191] the array of initials, that my original decision,

whatever it was, was reversed by the order of the Department.

Q. Would it necessarily be a reversal or a modification of some kind?

A. It would mean a reversal.

Q. In other words, that indicates to you that you had decided no fine should be imposed, and that your superior reversed your decision, is that correct?

A. I must answer that in the affirmative, with just a little mental reservation. I do not remember the specific case, but that is my dictation, from the array of initials.

In the fourth case, 430-875, there was a reversal of my original decision and a modification, and this is shown by a little private mark.

In all the other cases, my recommendations went through intact.

Q. The records I have shown are certified records of the Department of Labor involving these cases?

A. I recognize them as such.

Q. Was it customary to take evidence by question and answer of the witnesses in the proceedings before the Department of Labor?

A. At the Department?

Q. Yes.

A. No, sir; this is an appellate court. We act only upon the information which is laid down and submitted to the Commissioner of Immigration or officer in charge of the Board.

Q. You act on information that is sent in from Ellis Island and other sources, or from the steamship company, or the private individual?

Mr. Schulman: I object.

[fol. 192] A. Yes.

The Court: The witness nodded "Yes".

Q. The proofs that were considered by the Department were usually, if not always, submitted in written form, were they not?

A. Usually there is a protest from the steamship company.

Q. And you usually act, and they place before you whatever comes up from Ellis Island?

A. That petition or plea is always reviewed in connection with the evidence that is submitted.

Q. You take them as indicative of the facts that the party presents?

A. I take it as a plea or petition.

Q. Is there any provision for more formal proof than such proof as that in the Department of Labor?

A. The procedure is, of course, not precisely evidence in a court of law, and the actual method of presenting the case is not laid down in the Immigrant Law.

Q. Captain, it is a fact that quite frequently the Department of Labor remits fines, merely on the fact of unverified statements?

A. May I ask you to clear that up by telling me what you mean by unverified statements?

Q. I mean a written protest, not sworn to, we will say?

A. I do not believe I understand you.

Q. Suppose you get a letter from a steamship company or a reputable attorney, setting forth what they state the facts to be, and you believe from what is stated there that [fol. 193] the fine was improperly imposed, would you not then remit the fine?

A. It depends upon whether the company, in one way or another, by presenting evidence which is acceptable to the Secretary, has overcome the basis for the fine, as indicated on the notice of intention to fine, as issued by the port, as is indicated in the Board of Special Inquiry, if there be one.

Q. You might be satisfied with that condition by a mere letter?

A. That is rather—I may be satisfied with that condition without any letter. Many fines have been remitted, in which there was no letter of protest, no personal interest at all, because the record was not sufficiently clear.

Q. If I, as an attorney, should write a letter to you, setting forth a given state of facts, and there were no other proofs, would you question my statement of facts for the purpose of remission, or that a fine should be imposed, or not?

A. I would consider them. I do not know whether in any given case I would question them or not.

Q. You would not say that you would question them if I made a statement of facts as an attorney?

A. I might not question them, and still not find them sufficient.

Q. You might believe that the evidence was not sufficient, you would not question the truthfulness of the statements that I made?

A. I would not question your integrity as a man.

Q. You have considered a good many protests that myself or other members of my office have presented?

A. Quite a few.

Q. You know we always send them down in the form of a letter or accompanied by affidavits, do you not?

A. Yes.

[fol. 194] Q. And those are always treated as properly presented protests, are they not?

A. Quite correct, yes, sir.

Q. And we are sometimes successful in getting some of these fines back?

A. Rather frequently, aren't you?

Q. But not in medical cases, is that true?

A. I have no knowledge as to your success or failure in medical cases. There have been many successes from the standpoint of the steamship company in medical cases. Your own experience may have been very unfortunate in that particular line.

Q. Possibly. Captain, where the decisions that were rendered by the Department, was anything indicated to the steamship company?

A. That is outside of the Department's function.

Mr. Schulman: May I object. If counsel is going to go into new matter, he should make the witness his own witness. That is not proper cross examination. I did not ask the witness any questions which led to the basis for that question that is now being asked. If he wants to make the witness his own, he can.

The Court: What is the question?

Mr. Tibbetts: It relates to the practice in the Department.

Mr. Schulman: He asked him as to certain practices. You are going into new matter. He is asking how they sent notices to the steamship company.

The Witness: The attorney asked a question as to how [fol. 195] the steamship companies were apprised of the Department's decisions with respect to fines.

Q. When a case had been decided, was the reason for the decision or the text of the decision communicated to the steamship company?

A. After the decision is signed, the attorney, either in Washington, or an attorney who has directly entered his appearance in the case, is advised as to the outcome of the case, without the reasons therefor, and the Board also is advised as to the Secretary's refusal, without the reasons being mentioned.

Q. Was it the policy of the Department, and is it now the policy of the Department to decline to give out reasons for that decision?

A. The Department has declined to incorporate in its letters the advice and reason for the decision, but the attorney of record may at any time see the record of the Department, and find the reasons mentioned in the memorandum.

Q. If an attorney should write to the Department and ask for reasons for the decision, would the Department grant the request by stating such reasons?

A. Before June 18, 1926, I would have answered in the negative, but I do not know what is being done since June 18, 1926.

Q. I show you what purports to be a letter from the Commissioner General of Immigration, dated December 12, directed to myself. Would you state whether or not to your knowledge that is a letter from the Department of Labor (handing Witness)? Can you identify that as such?

[fol. 196] A. I recognize the signature as that of the Commissioner General of Immigration.

Q. That letter says: "Mr. D. M. Tibbetts. Dear Sir: Replying to your letter of November 14, relative to the fine instituted against the steamship Nerissa, which arrived at New York, March 9, 1929, on account of the alien Lillian Maxwell, you are advised that the Department has directed that no change be made in the outstanding instructions. The Department has also denied your request for a copy of its decision, as it has been its policy to refuse requests of this nature."

Is that in accordance with your understanding of the policy?

Mr. Schulman: I object to the question. The witness has already testified that since June 18, 1926, he has no knowledge of what they do, and this letter was written to Mr. Tibbetts and is dated December 12, 1929, and I also object to the questions to the witness directed to all matter which was not asked on direct examination. If he wants to make him his witness, he can do so. This is not proper cross examination.

The Court: I will overrule your objection.

Mr. Schulman: Exception.

A. I am not qualified to reply.

Q. Mr. Harry E. Hall is Commissioner General of Immigration, and is your superior officer?

A. Yes. In speaking of him as my superior officer, [fol. 197] I want you to remember since June 18, 1926, the fine cases have been routed through the Commissioner General of Immigration and have gone directly from the Board of Review to the Assistant Secretary of Labor.

Q. There is a reviewing power on the part of the Commissioner General?

A. In some few sections of the law, only.

Q. Is not the Commissioner General the man who is in general charge of the Immigration Department?

A. Of the Bureau of Immigration, but he has none of the powers of final decisions, such as is vested by law, under the Secretary's law, except under the Act of March 2, 1929.

Q. Look at the letter referred to. What is the meaning of the letter "C"?

A. That means that was written in the correspondence division of the Bureau of Immigration.

Mr. Tibbetts: That is all.

Redirect examination.

By Mr. Schulman:

Q. In considering the letters of protest or the pleas verbally made by steamship companies, do you do anything more than look at those letters and determine in your opinion what weight they should have as evidence, or should not have?

A. Accompanying the fine proceedings is a copy of the Board of Special Inquiry record.

Q. With respect to those particular letters. If that is part of your answer, I won't interrupt. Go ahead.

A. Accompanying such fine proceedings is a copy of the record of the Special Board of Inquiry, which shows the questions and answers at the Board, when the alien was [fol. 198] examined, and admitted to the United States. That Board of Special Inquiry record also contains verbatim copy of the medical certificate issued, and the certificate contains the opinion by the Public Health Surgeons as to the detectibility of the disease at the foreign port of embarkation.

Does that answer your question?

Q. Yes. Did you at any time state to representatives, either of the plaintiff in this action, the Lloyd Sabaudo Company, or other steamship companies, that you would not receive satisfactory affidavits which would describe the method by which the immigrants from Italy to the United States were examined as to physical and mental conditions in the United States, according to the offer of such documents?

Mr. Tibbetts: That is objected to for the reason that there is no evidence indicating that he made any such statements.

Mr. Schulman: I am asking him as a matter of his procedure. I think the door is wide open for such a question.

The Court: Go ahead.

A. I have never made any such statements.

Q. Have the steamship companies been at liberty at all time to offer papers, evidence of a documentary nature, to the Department of Labor if they saw fit to do so?

A. Yes, and reopen the case for submission of additional evidence or pleas, after the Department had acted.

Q. If the steamship companies had requested the opportunity to bring down their ship's surgeon there and make [fol. 199] statements before the Department of Labor, would that have been refused?

A. I do not think so, sir.

Mr. Tibbetts: You know it would, Captain.

Mr. Schulman: Just a moment. Did the Lloyd Sabaudo, the plaintiff in this action, ever make such requests of the Department of Labor in the years 1923, 1924 and 1925,

within the sixty days allowed for the company to present evidence?

The Witness: Not to my knowledge.

Mr. Schulman: That is all.

Mr. Tibbetts: That is all.

Mr. Schulman: I would like the record to show that it is stipulated by counsel for plaintiff and defendant that the testimony of the witness John W. Browning, which has been taken in this case, be admissible in evidence, if not otherwise objectionable, in the case of Navigazione Generale Italiana vs. United States of America, which is now pending before Honorable Frank J. Coleman, United States District Judge.

The Court: You, gentlemen, will have to bring that to Judge Coleman's notice. I won't pay any attention to it.

Mr. Schulman: I would like the record to show that the testimony, if otherwise admissible, may be used in that case.

The Court: Very well. Anything further?

[fol. 200] Mr. Schulman: May I suggest at this time that I be given opportunity until next Tuesday to present a brief on the admissibility of any vidence not presented before the Department of Labor, before we bring any other witnesses? I think we ought to get that question out of the way.

The plaintiff's foreign witnesses have been heard.

Mr. Tibbetts: That is satisfactory.

The Court: All right.

Mr. Tibbetts: Submit them Tuesday morning?

The Court: Yes, and exchange and submit them.

New York, July 10, 1930—4.00 p. m.

Dr. Henry M. Friedman, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Mr. Schulman: Before questioning the witness I just wish to state for the record that the defendant still maintains its objection to the admissibility of any evidence of the character which has been taken at the trial, and which is now about to be given.

The Court: Decision on all motions to strike out testi- [fol. 201] mony, relating to the admissibility of the testimoney, will be reserved.

Mr. Schulman: All right.

Direct examination.

By Mr. Schulman:

Q. What profession or occupation are you engaged in at the present time?

A. In the medical profession, particularly as to the medical office in the Public Health Service.

Q. How long have you been in the Public Health Service?

A. About twenty-three years.

Q. During that time where have you been stationed?

A. Stationed in Philadelphia for a short time and the Ellis Island Hospital, and Ellis Island examining line, and in the boarding division.

Q. Since what year have you been stationed at Ellis Island?

A. Practically since 1907, or 1908.

Q. Are you a member of the Bar of the State of New York?

A. I was admitted about 1913. I have a degree of Bachelor of Laws and Master of Laws and have written rather widely on medical jurisprudence, though I never practiced.

Q. In addition to your connection at Ellis Island and the doing of things at the Island, have you any other occupation?

A. I am consulting psychiatrist to the Home Bureau, a child placing organization, having one thousand children to let out. I do the mental examining. I am psychiatrist to the Fellowship House, which is an after care organization of children discharged from orphan asylums.

[fol. 202] Q. You did the examining. Have you written on medical jurisprudence?

A. And allied subjects.

Q. Have you also written for medical journals?

A. Yes, three medical journals: American Medical Association, Boston Medical Journal, Medical Record and the New York Medical Journal—four.

Q. In these journals did you write your articles on medical jurisprudence?

A. On medical jurisprudence, on trachoma, mental conditions, on vision, and on a great many medical topics, besides writing editorials on medical topics for some of the journals I mentioned.

Q. When did you obtain your doctor's degree?

A. From Columbia University, 1905.

Q. The College of Physicians and Surgeons of Columbia University?

A. Yes. And Bachelor of Laws, and Master of Laws, from the New York Law School.

Q. In addition to the institutions you have stated, you are connected with, are there any others, or is that all?

A. I should say that is all. I have conducted mental examinations, on a more or less voluntary basis, for a number of organizations allied with those I mentioned, but only on occasions.

Q. With respect to examinations for tuberculosis, what, in your opinion, would be the best method for a doctor to employ in determining the presence, especially the late presence, of such disease?

A. It would include taking the temperature of the patient, usually in the morning and afternoon, the examina- [fol. 203] tion of the chest by medical methods, auscultation, percussion, palpation and examination of the sputum by the microscope and ultimately the X-ray or fluoroscope of the chest.

Q. Without the use of the X-ray would it be possible to be certain as to whether or not an individual had tuberculosis?

A. No examination of the chest for tuberculosis would be complete without an X-ray examination.

Q. With respect to the flu-roscope, would you give the same answer you have just given about the X-ray?

A. I would rather have the X-ray than the fluoroscope visualization.

Q. Is it possible that without the X-ray to fix the tubercular condition, would you say it would not be ascertained by auscultation, percussion and palpation?

A. Perhaps deeply seated lesion of the chest would escape very careful medical examination.

Q. Now, with respect to tuberculosis, is it possible to tell merely from the appearance of the individual whether or not he is infected with that disease?

A. There are some outward indications, and no clinication would be willing to make such a diagnosis.

Q. What I mean is this. would it be possible to determine

with certainty, merely by outward appearance of an individual, that he was or was not infected with tuberculosis?

A. No.

Q. Will you kindly explain why it would not be possible to do that with certainty?

A. Because the lesion may be so deep in the chest that the sound of hearing or tapping of the chest would not go so deep into the chest as would the X-ray. I might say that [fol. 204] the hearing and vision is not sensitive enough to elicit signs of tuberculosis, not as sensitive as the X-ray.

Q. So, if I understand you, in the case of a latent tubercular condition, only the X-ray would reveal that condition, if it could at all be revealed?

A. The X-ray would be more likely to reveal it than any other method.

Q. Is it or is it not a fact that an individual, to the outward appearance, may be robust and healthy, having a good complexion, and have a latent tubercular condition?

A. Yes, in fact a robust individual with tuberculosis has a rather harder time, because you can not make changes for them and their benefit. If they have sufficient physique to withstand the disease, if they have it despite that physique, the chances are very likely the tuberculosis——

Q. With respect to such robust individuals that we have been ta-king about, am I correct in understanding that the use of the X-ray would determine the presence of a latent tubercular condition, that is, a condition of the lung?

A. It would indicate a lesion in the lung in the individual, which would otherwise escape such detection by the usual medical or physical examination.

Q. With respect to a valvular disease of the heart, what, in your opinion, would be the best method for ascertaining the existence of what is termed chronic cardiac?

A. The X-ray likewise would show changes in the heart that accompany valvular disease, much better than the other methods or method.

[fol. 205] Q. What other method would have to be employed as a matter of routine in determining its presence?

A. Auscultation, the stethoscope or ear itself, and its application to certain other circulatory disturbances that accompany heart disease conditions.

Q. Could an examination for valvular disease of the heart be made without the use of the stethoscope?

A. No, not at all.

Q. Will you kindly explain why that is?

A. The stethoscope is an instrument for enlarging the sounds of the heart, as well as the limiting them to an examination of the chest, as you are likely to find a great many sounds in the chest other than those for which you are looking for the valvular condition of the heart.

Q. If the examination of the chest is made by the ear placed against the chest, you will have this confusion of sounds?

A. Yes, it is rarely done without the stethoscope, as it is not a good clinical method just to listen with the ear alone.

Q. With respect to favus of the scalp, or ringworm of the scalp, or favus or ringworm of the nails, what, in your opinion, would be the best method for the discovery of the presence of such a disease in an individual?

A. There is only one method of certainty, and that is a microscopic examination of the tracings of the nails, or inflammatory products of the scalp for the fungus that causes the diseases in question.

Q. Am I correct in understanding that in a case of scalp condition of the individual, or nail condition, which a doctor might consider somewhat peculiar and out of the ordinary, [fol. 206] to determine as to whether or not that condition was favus or ringworm of the scalp or nails, could not be made without a microscopic examination and analysis?

A. Could not be made at all.

Q. So, that an examination that could not resort to the use of the microscope in such peculiar conditions, could not really reveal to him what those conditions were?

A. No, the conditions of those two diseases are not made, unless confirmed by a microscopic examination.

Q. With respect to gonococcus infection, what would be the best method, in your opinion, to detect the existence of that disease in an individual?

A. No suspected gonococcus disease is considered to be such without finding the presence of the diplococcus gonorrhœa.

The Court: None of these aliens had that disease.

Mr. Schulman: I think there is one gonococcus infection here.

The Court: Did the plaintiff go into that?

Mr. Schulman: They have gone into a general description of the examination given.

Mr. Tibbetts: No gonococcus in these cases.

The Court: All right, go ahead.

Mr. Schulman: My recollection was at fault. I withdraw the question. I would just as leave withdraw the question. [fol. 207] The Court: I do not think it is relevant any way. I do not think any of these people were excluded for that reason.

Mr. Schulman: If they were not excluded, then it would not be strictly within the issues of the case.

Q. With respect to sycosis barbae, what would be the best method, in your opinion, to determine the existence of that disease?

A. There are two kinds of sycosis. Sycosis barbae is a fungus disease, and is not diagnosed without the use of the microscope; and the other sycosis is a germ or coccus disease, and a microscopic examination is similarly used to confirm the presence of those diseases.

Q. Both of those conditions come under the name, sycosis barbae?

A. One is sycosis barbae and the other is sycosis.

Q. Will you explain what sycosis is?

A. Sycosis barbae is a condition of the skin affecting the hair portions, and being described as nodules appearing on the surface of the skin, which has phronisity and yields to treatment with great difficulty.

By the Court:

Q. Is that disease contagious, Doctor?

A. Yes.

By Mr. Schulman:

Q. With respect to ascertaining the presence of syphilis in an individual, what, in your opinion, would be the best [fol. 208] method to do that?

A. In the first stage of syphilis, which evidences itself by a hard chancre, its appearance and its feel, and ultimately by a microscopic examination, which reveals the spirillum of syphilis. Ultimate diagnoses are made, and also the appearance of the skin or other organic lesions, together with serological examination.

Q. By that you mean an examination of the blood serum?

A. Yes. Such as the Wasserman reaction and the lumbar puncture.

Q. What is that?

A. A needle is driven into the spinal canal, fluid drawn off and the content and the chemical examination of this fluid determined. A large amount of white cells and a great amount of globulin is indicative of syphilis.

Mr. Tibbetts: We have no case of individual syphilis, but abnormal systemic condition.

By Mr. Tibbetts:

Q. There is no distinction between what you term abnormal systemic condition and syphilis?

A. This particular formula is used where no other abnormal fact presents itself, subject to a positive Wasserman test of great degree, plus four. It was not considered fair to call a condition syphilis purely on the Wasserman test alone, and therefore this formula was used to indicate the change in the blood, which makes us suspect the presence of a syphilitic or luetic taint.

[fol. 209] By Mr. Schulman:

Q. In addition to the examination of the blood serum and the lumbar puncture, are there other symptoms which would be taken into account in conjunction with these methods for an accurate determination of whether a person is afflicted with an abnormal systemic condition, or syphilis?

A. Those were used. It is true, when no other signs present themselves, such condition as a skin eruption or other condition, such as disease of the blood vessel, due to syphilis. We are not forced to use the formula mentioned.

By the Court:

Q. Does the Wasserman test indicate anything except syphilis, Doctor?

A. The positive Wasserman test indicates syphilis, a negative does not, but there are certain other rather tropical diseases, like yaws, which have a positive Wasserman.

By Mr. Schulman:

Q. During the years 1920 to 1928, with respect to those years, would your answer be the same, where there is a

volume of business, the cost of the Wasserman test would be relatively small?

A. I would say that the cost then was large. Since then science has found a great many so-called antigens, which are the indicators in this particular phase.

[fol. 210] Q. What, generally, was the cost of the Wasserman test in the United States during the years 1920 to 1928?

A. I could not tell you. I only tell you relatively that I could get a test for a private patient between five and ten dollars, and now for two dollars, but the cost is very much less under our scale.

Q. It certainly would not exceed ten dollars?

A. I would not want to say that. It all depends on professional work. It costs according to the person to whom you apply.

Q. If you went to a laboratory that was organized for making various analyses for physicians, would that reduce the cost?

A. Yes, it does make it much less, I should judge about one-fifth, to go to a commercial laboratory or a doctor who has nothing else but those tests.

Q. With respect to feeblemindedness, what, in your opinion, would be the best method to detect that condition in a patient?

A. The test includes, of course, the history, of conversation, judgment, orientation of the patient, psychological tests, such as the Binet-Simon test and confirmatory tests or puzzles.

The history of the Binet-Simon test in France, in view to grading the mentality of children in French schools, giving tests to children of various ages, to determine what tests could be passed by children in each age. That age test became the quotient or indicator in the determination of his mental grade.

An individual who did not grade above three years, but who was older, was considered to be an idiot.

[fol. 211] An individual who graded up to seven, was considered to be an imbecile.

And an individual who graded between that and twelve was considered a moron.

The lines of demarcation are very indefinite.

Experience in the examination of the child for mental conditions, most of the time gives you that insight into their condition which machine tests won't help to confirm.

(Discussion off the record.)

Q. Am I correct in understanding, Doctor, that this mental test may of course be varied to comply to principal factors which are based upon conditions of national background?

A. No, I think in the final analysis we attempt to determine concurrently whether that individual is possibly made by any standard training and standard of national race or other conditions.

Q. That is the practice at Ellis Island?

A. Yes.

Q. What kind of problems, what test should be given as a matter of routine to test the mentality?

A. The first thing to do is to deal in the test condition with an individual in those surroundings he should know, and from that point spread out into the circumstances a normal individual in any environment should know, and ultimately to confirm this opinion by so-called conformatory tests, which consists of puzzles, blocks, filling in tests, and a great variety of others.

[fol. 212] Q. By asking an individual a few questions about his home life, or questions of his daily labor or work, and a few questions, "Where are you going?" "Who is the King of Italy?" and things of that sort, would you be able to determine conclusively that an individual was or was not feebleminded?

A. Oh, no.

Q. Then, I take it that these questions are merely preliminary to the condition of the mind, and there must be given to the individual the tests you have mentioned?

A. If he knows some of the most fundamental things to the more complicated, only.

Q. Are those given in Ellis Island?

A. Yes. We have a test card on which we put our findings, and keep them in front of us.

Q. From your experience in examining for mental conditions, are you able to state whether this is or is not a fact: that an individual may be feebleminded and nevertheless be able to answer simple questions of the nature I have asked you about in my previous question?

A. Yes, indeed. A feebleminded person can do a great many things for themselves.

So many of the hewers of wood and drawers of water make no contribution to society, although they can take care of their physical wants.

Q. Would the fact that a woman was able to perform her household duties, necessarily mean that she was not feebleminded?

A. No, even an imbecile could do that to some extent.

Q. But the mere fact that a woman can do her duties around a farm or a house, would not be a clue as to whether [fol. 213] she was feebleminded or not?

A. Not if it did not require too much co-ordination and capacity.

The Court: Do you have many cases of feebleminded-ness detected at Ellis Island?

The Witness: Yes, indeed. They come up so often. Most of the men have special training psychiatry, although not all the men, but they are turned over for final determination to those having special training in psychiatry.

Q. You can pass many of them by mental alertness, in looking them over?

A. Yes.

Q. Is there a distinction to be made between a condition called stupidity and feeblemindedness?

A. I would not want to call stupidity feebleminded-ness. I would consider feeblemindedness a grossly pathological condition. Stupidity is only a point of view, after all.

Q. When you say that you are able to tell by looking the person over, if he is feebleminded, that would be the case, would it not, where the facial expression was generally abnormal, such that obviously the person is feebleminded?

A. That applies likewise to his environment, and we expect certain reactions. If he varies too widely from the standards we expect, we consider him abnormal, and if he then, on a more thorough examination, fails to qualify, we consider him deficient.

Q. Is it not possible for an individual to be feebleminded and not have a facial expression or demeanor which would [fol. 214] indicate that just to the eye?

A. Oh, indeed. It used to be thought one could tell by appearance, the old Lombrosian school thought so, by expression, whether a man was defective, but that is not now held.

Q. In those two cases you mean, I suppose, you mean to include feebleminded?

A. Yes, and include in that idiot, feebleminded and imbecile.

Q. As I understand your testimony, the only method which will give real assurance of a feebleminded condition is all of those things you discussed, not just look at the person and ask a few questions, is not that correct?

A. I think so. I would not want to sign my name to a certificate unless I have gone over those conditions, over and over again, and have had the individual under my observation for a period.

By Mr. Tibbetts:

Q. You spoke of signing a certificate. You mean by that you would not want to sign a certificate that a person was defective without this careful examination?

A. Yes, indeed. We ordinarily examine these individuals and send them back to their rooms and take them back the next day, and send them back the next day, and if they improve in any degree, we hold them there for further examination. We send them back until we find no amount of examination or observation makes any difference in their condition.

[fol. 215] By Mr. Schulman:

Q. What process do you pursue in order to eliminate such factors as fear, and persons in a strange environment?

A. Yes, we also get all the factors to be able to get the refinements of thought between the alien and the examiner, even though the examiner understands the particular language.

Q. Were you present in the court room at the time that Dr. Dandini testified?

A. Yes.

Q. Were you there during the entire time he was on the stand?

A. Yes.

Q. Did you listen to the examination which he described was customarily given to prospective immigrants into the United States, who would be emigrants from Italy?

A. Yes.

Q. In your opinion, how long would it take to give a competent examination covering the various parts of the body that Dr. Dandini testified were examined by him in making his examination?

A. If you include the examination by machinery and X-ray——

Q. Inclusive of the X-ray, microscopic and urine analysis?

—. I should answer between one-half hour to a few hours.

Q. To give an individual an examination which would reveal latent disease, what time would it take for a physician to do that in such a way if there were latent diseases discoverable, he would discover them?

A. It is difficult to pass upon the doctor's process. It would take considerable time, depending upon the skill of [fol. 216] the examiner and his alertness, and the severity of the disease which the patient had.

Q. To give an individual a general examination to ascertain whether he is sound or has some defect, a careful examination, how long would that kind of examination take?

A. It is very difficult to say. It might take anywhere from half an hour to a few hours.

Q. Am I correct in understanding that to give an individual an examination to ascertain his physical and mental soundness it would be a matter of at least fifteen minutes?

A. More than that, if you include mental examinations. You might be hours.

Q. Would it be possible for a doctor to look an individual over in a space of from three to four minutes and be able to determine with certainty if that individual was entirely sound and had no physical or mental defect?

A. I would not want to consider it a complete examination by any means.

Q. What do you mean?

A. I do not think the profession would consider the examination to be complete.

Q. Will you just elaborate on that, about what there is to that kind of examination to render it incomplete?

A. It would be an inspection, not a clinical examination.

Q. Are you able to state, briefly just where the difference would lie, what you consider an inspection and what you consider a clinical examination?

A. A clinical examination would include a careful ex- [fol. 217] amination of the scalp, an instrumental examination of the hair, instrumental examination of the eye and retina, instrumental examination of the teeth, nose and throat, an examination of the chest with the various instruments that go with it, and examination of the abdomen, of the limbs for paralysis and for fractures and spasms, and so on; an examination of the genitals for venereal and other diseases, an examination of the gait, posture and so on.

Q. As a matter of time involved to cover all those things, so that the ground of the doctor's observation would be accurate——

A. It also includes an examination of visual acuity by the use of the test cards.

Q. With respect to the time involved, for a doctor to go over all the grounds you have just described, and make a real accurate examination of the individual in the various respects that you have mentioned, could that be done in the space of just a few minutes?

A. Oh, no.

Q. In other words, to look at an individual for a few minutes and pass him as all right, it would be a matter of that particular doctor's judgment that the individual was sound, rather than a determination that he was sound after the proper kind of examination?

A. It would lay him open to a great many failures of detection.

Q. With respect to ascertaining when an individual has a defective visual condition, what would be the best method to employ for that?

A. The use of the ophthalmoscope.

Q. What kind of an instrument is that?

A. An instrument for determining the condition of the [fol. 218] retina and the lens and then tests of the lenses with a test chart, usually a so-called Snellen test chart of both eyes.

Q. What is that, a chart which contains lines of letters?

A. Letters which one is supposed to see at various distances, the letter at twenty feet. If one sees it at one hundred, the quotient is 20/100ths, when it should be 20/20.

Q. Can a defective condition be properly discovered merely by instructing a patient to hold their hand over one eye, while several fingers are extended at a distance of, say five or ten feet, with the request that the individual state the number of fingers extended?

A. It is a very crude method, and the results would certainly not be binding.

Q. Could you detect whether a patient was sound or defective merely by handing an individual a newspaper and asking him to read it, first with one eye and then another?

A. It would be a crude and unscientific method.

The Court: There are not any individuals with defective vision. There is one blind man.

Mr. Schulman: Probably in my zeal I got a little out of the issue.

(Adjourned to July 11, 1930, at 4.00 p. m. at the same place.)

[fol. 219] New York, July 11, 1930—4:00 p. m.

Met pursuant to adjournment.

HENRY FRIEDMAN resumed.

Direct examination resumed.

By Mr. Schulman:

Q. Dr. Friedman, with respect to tuberculosis of the skin, what in your opinion would be the best mothod of determining whether or not that disease was present?

A. Tuberculosis of the skin is largely diagnosed on its clinical appearance.

Q. Will you explain? Elaborate that a little bit.

A. It is largely diagnosed on its clinical appearance, and it may be confirmed on microscopic examination by removing a section of tissue.

Q. With respect to that disease, can you have symptoms present which will indicate the nature of the disease before the disease has been in process for a considerable time?

A. No; there would be no way of discovering the disease until it had made its appearance on the surface of the skin.

Q. Before it makes its appearance on the surface of the skin is it necessary a considerable time elapse?

A. This disease is very insidious and its development is slow and of long standing.

Q. So that would you say, then, that if a person has tuberculosis of the skin the skin is in such condition that you can see that the person had to have a history of that quite a while?

[fol. 220] A. I would say that tuberculosis of the skin is a long standing condition before it becomes evident in any degree on the surface of the skin.

Q. When it becomes evident, is it a matter of becoming evident in a short time, in the space of a day or so?

A. No.

Q. Will you explain what you mean by that answer?

A. The disease is insidious and it takes a long time for the tubercular germs to break down the tissue forming the tubercle and spread on the surface of the skin.

Q. So that, finally, when you have a condition of the skin indicating that disease, the process has been in effect for a long time?

A. When the condition has spread itself over the skin, the condition is of long standing, because that condition is chronic rather than acute.

The Court: Isn't it true that in every disease there comes a time when it is evident——

The Witness: Yes, indeed.

The Court (continuing): —and that might as well have been on a voyage immediately before the examination at Ellis Island as, say, a month or two months before?

The Witness: A chronic disease commences from an infection by a germ, especially the kind tuberculosis is. It will, so to say, burrow before it comes to the surface and actually forms a tubercle, which is the index of tuberculosis [fol. 221] before it spreads itself out in its characteristic appearance on the skin.

The Court: In every disease, if you assume a competent examination made today, it might be the case, might it not,

that the same examination made two weeks ago would not have revealed the existence of the disease?

The Witness: Possibly.

Mr. Schulman: Except that with tuberculosis of the skin—that is just the point.

The Court: It does not matter how slow it is, there is a stage in everything, I should think, of growth.

Mr. Schulman: That is just what I was asking the doctor. As I understand tuberculosis of the skin, by the time you have visible symptoms you have the symptoms and two weeks won't make any difference.

The Court: Visible symptoms may not have been there two weeks before. The disease was there two weeks before.

The Witness: There comes a time in these chronic diseases when a tissue begins to break down, and that is a considerable period after the inception of the disease.

The Court: But the same examination you held today might not reveal the existence of the disease, although prevalent two weeks ago.

The Witness: It is hard to place the line of demarcation.

The Court: That would be true of trachoma too, would it not?

[fol. 222] The Witness: No one makes the diagnosis of trachoma until the condition is really a chronic one. Acute trachoma is rare to see. Of the many thousands I have seen I could not remember half a dozen I have seen that were acute, in the case of trachoma.

Q. With respect to tuberculosis of the skin, Doctor, you have described the process whereby the skin tissue breaks down. When that breaking down process begins, does the lapse of fourteen days make any material difference in the face?

A. In chronic condition of tuberculosis of the skin the question is a matter of months, rather than days or weeks.

Q. In other words, this process of breaking down skin tissue would be going on over months; so that if a man left Italy on the 10th of the month and arrived in the United States on the 25th of the month, if he had those visible symptoms he would have them at the time of his departure; is that correct?

A. I think so; because tuberculosis of the skin is a diseased condition that lasts a life time, without spreading to any considerable degree.

Q. I think in the particular case we have here, I think the alien testified that he had it five years, if I am not mistaken.

The Court: I can see that, of course, the doctors examining at Ellis Island may generally state with quite a fair degree of accuracy on examining a man that in their opinion [fol. 223] the disease was detectable fifteen days before; I can see that. But the mere fact that a disease is of slow development, that mere fact and the fact that they discovered the disease here without the additional certificate by the doctors I do not think proves anything.

The Witness: We would not have stopped to make a diagnosis of lupus vulgaris unless we had covered a considerable area of the skin; it would have taken months and years to become so large.

Mr. Schulman: My only purpose in asking the witness the question was to be of information to the court with respect to the disease.

The Court: Suppose that the requirement of the law was not what it is, that they must certify that the disease was detectable at the time of embarkation. Suppose that was out, and all they had was a certificate to present with trachoma or tuberculosis at Ellis Island. It would seem to me that *that* their certificate, that is trachoma, that the mere fact that trachoma would probably be a disease of considerable development, covering quite a space of time, would not show—that mere fact in itself would not show it was detectable on the other side. But, of course, when you add in their certificate their statement that the disease was, in their opinion, sufficiently developed at the time of em- [fol. 224] barkation from an examination made two weeks later, that it was detectable, I can see there is great probative force in that. I suppose the medical officers that examined him down there are experienced men, and that means if they certify a person suffering from trachoma in their opinion had it in such form that it would be detected by a competent physical examination in Italy, they are taking into account that they are examining two weeks later. I do not see, though, what the single fact that the disease is of long standing has to do with it, because there always comes a point——

The Witness: It may be a week or ten days.

The Court (continuing): —there always comes a point in every disease where it will be detected and where prior to that time it was not detectable.

Mr. Schulman: That is just it. Every disease, you might say, has its temporary symptoms and its more or less permanent stage of development.

The Court: I might be prostrated next week, and the doctor might diagnose me as that disease being one of months standing, and yet a competent medical examination of me today won't show it.

The Witness: I won't admit that as a medical man. An individual collapse is not because the disease has progressed or not progressed, but because the vitality has been [fol. 225] consumed and is no longer able to stand up.

The Court: That does not affect the value of the certificate, bear in mind.

Mr. Schulman: No. This was only brought out to show how the things could be discovered. When a disease reaches a certain permanent symptom which is ascertained upon arrival here, then a doctor, by taking that symptom and from his medical knowledge, can figure back a period of time and knew what the symptoms should have been.

The Court: Yes; and I suppose the Government's position is that it is to be presumed the doctors did it, that in every one of these cases the certificate tends to show that.

Mr. Schulman: We are not offering testimony as to that point. All we want to show is the possibility of discovering some of these diseases, because diseases do have permanent symptoms, and when we know the permanent symptoms here we are able to reason back and know there must have been symptoms abroad which a careful examination would reveal.

Mr. Tibbetts: May I just ask a question to be sure as to what the Court understands in regard to these certificates. I gathered from what you just said you understood the law provided that the doctors should make a certificate stating [fol. 226] whether or not in their opinion the disease existed in detectable form before embarkation. If that is your Honor's understanding, I think it is erroneous, because my understanding of the law is the only reference to a medical certificate is in that portion relating to the excludability of aliens, and there it provides that the doctor

should make a certificate as to whether or not the disease existed at the time of arrival. There is no provision in the law relating to a certification as to whether it might have been detected before embarkation.

The Court: That is the common practice, of course.

Mr. Schulman: That is a regulation; and the Government would then take the position that that regulation, not being ostensibly inconsistent with any provision of the Immigration Law, has the force and effect of law.

The Court: Yes. I thought it was actually in the statute.

Mr. Schulman: No. I think Mr. Tibbetts is correct; it is not actually in the statute, but it is in the regulation.

Mr. Tibbetts: And there is no provision in the statute for a medical certificate certifying fine cases.

Mr. Schulman: We have to stand on that ground, I think; we would say there the regulation has the force of law and supports everything that follows, or else the Gov- [fol. 227] ernment would fall. With respect to the Stranahan case, it was just the same situation; they did not have any provision of law there with respect to a certification.

Mr. Tibbetts: I simply wanted the matter to be plain, there is no statutory provision applying to a case of this sort, and there is no statutory provision of any kind relating to a certificate as to detectability before embarkation.

The Court: You may be right. I may have read that in the opinion in the Stranahan case and jumped to the conclusion it was in the statute.

Mr. Tibbetts: I have looked into it very carefully and I feel I am correct about it.

Q. With respect to trachoma what would be the best method of detecting that disease?

A. By eversion of both eyelids.

Q. What would be the symptoms a physician would look for in making a competent examination?

A. It would be a productive inflammation of the eyelid with scarred tissue surrounding the new formed inflammatory tissue.

Q. With respect to the presence of scars or a scar in the eyelid, will you describe the appearance of such a scar?

A. Scars in the conjunctiva are indices of cure; and a scar in the eyelid, in conjunction with inflammatory tissue means that that particular part of the tissue which is

scarred has been cured, and as the disease becomes cured the scarred tissue encroaches on both the inflammed eyelid [fol. 228] as well as the normal eyelid.

Q. What is the appearance of this scar?

A. There are little islands of inflammed tissue around which the little scar canals form.

Q. What is its color?

A. The color depends on the degree of scarification. If it is well scarred it is white; if not, it is more or less pinkish. Complete scarification leaves an entirely white or blanched eyelid.

Q. Does the fact that you find just one white scar in an eyelid mean that the person that has had that trachoma condition is permanently cured of the disease?

A. On the contrary the presence of scarred tissue gives warning of the likelihood of reactivation, reinfection if you will, of the eyelid at some further time.

Q. After what stage would you say that there would be no possibility of further outbreak of trachoma?

A. When every bit of conjunctiva has been replaced by scarred tissue and there is no longer present any bit of either normal or abnormal conjunctiva.

Q. That would be a condition where the whole conjunctiva was one mass of scars?

A. Was one scar.

Q. But as long as there was just a little scar, or a few little scars in the conjunctiva, and the rest of the conjunctiva was not scarred, that would be a warning of a previous history of trachoma and the possibility of its breaking out again?

A. Yes, sir.

Q. In your opinion would it be possible for one doctor to examine 300 persons in the course of a twelve hour day [fol. 229] and give each one a thoroughly competent examination which would reveal any latent mental defect they might have?

A. That is a difficult question to answer, because that would depend on the ability, alertness and assistance such a doctor would have.

Q. With a doctor just examining the immigrants in this case say one by one alone, unaided, what would your answer be?

A. I could answer by giving a parallel that the medical officers now in the public health service abroad who do this same sort of examination one by one, do a very considerable number less than the number you mentioned every day, with assistance both medical and clerical and nursing.

Q. Is it or is it not a fact that if one man examines a number of people all day long there is tendency for his powers of observation to become less acute, with the result he may fail to observe symptoms and conditions which might otherwise be discovered?

A. That element of fatigue is a variable quantity, depending on the examiner, the time of the day and his own physical condition; and the whole subject of fatigue has been a matter of investigation during the war. It would be very difficult for me to say how much fatigue one individual might have in such an examination which would render him not so competent to do the examinations.

Q. As a matter of time, could one man give, in the course of a twelve hour day, to 300 individuals the kind of examination, as distinguished from inspection, which would reveal latent physical or mental defects?

[fol. 230] A. I can only say again the element of fatigue would enter into it; and at the end of the day, after 300, his powers of observation would be dulled——

Q. I do not think you understand the question. As a matter of time, would he have adequate time to give a competent examination of 300 people in the course of a twelve hour day?

Mr. Tibbetts: That is objected to for the reason it has already been answered, and it is repetition.

The Court: I thought he covered it. However, you may have him answer again. Objection overruled.

Mr. Tibbetts: Exception.

A. If you say, instead of "competent", you say complete, if the examination is to be complete in accordance with my outline of what an examination should meet, it would seem to me an examination of 300 would be out of the question.

Q. I will amend my question by saying "complete" instead of "competent". By competent I meant a complete examination.

A. It might be competent and incomplete; it might be competent and most incomplete.

Q. How could that be?

A. It might only affect certain parts of the body; might take in certain parts of the body and not be complete of the whole body.

Q. In making an examination of an individual to discover whether he was sound mentally and physically, yesterday you testified as to what should be done and as to the length [fol. 231] of time it would require. With respect to making such a complete examination as you testified to yesterday would one man be able to make such a complete examination of 300 individuals in a twelve hour day?

A. No.

Q. Would two men be able to do it?

A. No.

Q. What in your opinion would be the requisite number of doctors to make a complete competent examination of 300 individuals in a day such as would indicate their mental and physical soundness and reveal any latent conditions there might be?

A. I should imagine you would have to divide the body up into a great many parts and assign a part to each doctor; so that one doctor would see his eyes and another man another part of his body and so on; so that a great number of people could pass through such an examination without having one medical man lose time in changing from one form of examination to another.

Mr. Schulman: That is all.

Cross-examination.

By Mr. Tibbetts:

Q. Doctor, what are your particular functions in connection with your service at this immigrant station?

A. Physical and mental examination of aliens presented to us for examination.

Q. Where did you make those examinations?

A. On Ellis Island in the hospital, and on board the vessels as they arrived in the harbor.

Q. At the present time where are you making the examinations?

A. On board the vessels as they arrive in the harbor.

[fol. 232] Q. How long have you been presently making examinations on board?

A. Together with all the three places I spoke of I have been doing it around 22 years.

Q. Has your experience been mostly with examinations on board?

A. Examinations on board.

Q. How much of the time have you examined at Ellis Island or in hospitals?

A. I should say, off and on, three or four years altogether.

Q. Did those periods include examinations in the hospital as well as in the stations before the hospital?

A. I want to say, however, that my examinations in the hospital were chiefly concerned with mental cases.

The Court: Has the examining personnel been increased a good deal of late?

The Witness: On the contrary, it has been reduced; it has been skeletonized.

The Court: What is about the approximate personnel for the last seven or eight years?

The Witness: Since the quota regulations on Ellis Island they may average on the line inspection three or four and on the boarder division nine or ten.

Mr. Schulman: I wish to note an objection to this testimony as incompetent, and immaterial; it is not within the issues.

The Court: I am asking probably for curiosity.

Mr. Schulman: If you want to ask off the record, all right.

[fol. 233] The Witness: However, in the hospital the staff has been increased, because most of the cases go directly now to the hospital. They come there with definite diagnoses either from shipboard or other outside places and go direct to the hospital.

Q. Did you say four or five on the line? By that do you mean that is the total number who are engaged in examinations of aliens on all incoming ships with aliens?

A. Yes. Only so few aliens go to Ellis Island now. Only those who have not been examined abroad. I forgot to add there are two or three more physicians there, too.

Q. Take it back in 1922, 1923, 1924, 1925 and 1926, how many public health doctors were assigned for boarding examination purposes?

Mr. Schulman: I object to the question as calling for testimony which is incompetent, irrelevant and immaterial and not proper cross examination. There has been nothing asked of this witness on direct which lays any foundation for such a question.

The Court: Objection overruled.

Mr. Schulman: Exception.

A. The Boarding Division consisted of anywhere from seven to perhaps a maximum of fourteen doctors.

Q. And they made examinations of all aliens coming to this port?

A. One or two doctors were assigned to each boat, and [fol. 234] those aliens who were not picked out for Ellis Island inspection were examined on board.

Q. Did you make examinations yourself during that period?

A. Yes.

Q. On board ship?

A. Yes, sir; on board ship.

Q. What was the character of your examination of aliens which you examined on board ship?

A. In what way do you mean?

Q. Describe the character of examination you made?

Mr. Schulman: I again object as not proper cross examination and not within the issues.

The Court: Objection overruled.

Mr. Schulman: Exception. I may state the ground of the objection is this: that the system of examination adopted by the United States authorities has absolutely nohing to do with the examinaion as to competency which the Steamship Company should give abroad.

The Court: But I suppose Mr. Tibbetts' purpose is to show that the Line gives just as thorough an examination——

Mr. Schulman: That is just the point of the examination. The burden is on the company under our law not to bring over a diseased alien.

Mr. Tibbetts: It has some bearing on the competency.

The Court: It is a standard.

[fol. 235] Mr. Schulman: But it is not a proper standard, because in those years——

The Court: When did they start examinations abroad?

Mr. Schulman: Not until 1927. There were so many defectives coming over that they decided on that system. With respect to the years before 1927, the point of my objection is this: there were thousands of aliens brought into the Port of New York and the United States was forced to establish an immigration inspection service and do the best it could; and its method of catching these diseased or physical defectives has absolutely no bearing on the competency of the examinations given abroad; and on that ground I object to this entire line of testimony.

The Court: Objection overruled.

Mr. Schulman: Exception.

A. You want me to tell the method of examination now?

Q. Yes.

A. It consists really of two types of examination. The one type refers to these aliens who have been examined abroad by our medical officers.

Q. I am referring back now to the time before American Public Health doctors examined abroad?

A. The cabin passengers, first and second, filed before us. We spoke to each one, would say something to them, examined them from head to foot, noted their general ap- [fol. 236] pearance, and if we had the slightest suspicion we would sit them down and go back to them and re-examine them, and we did it again until finally I came to the number I felt should go to Ellis Island station for more thorough examination.

Q. How many, at that time, would you ordinarily have to examine on a given occasion?

A. Sometimes many hundreds; sometimes maybe thirty, forty or fifty; sometimes less; varying from one passenger to many hundreds.

The Court: How about the steerage passengers?

The Witness: They went to Ellis Island direct.

Q. Did you have sometimes as many as five or six hundren to examine on board ship?

A. And more than that.

Q. Would you make those examinations in the course of a single day?

A. Sometimes. Sometimes we could not finish when a boat came in late at night, and we did it the following day.

Q. If the boat came in in the morning, would you usually finish that day?

A. Yes.

Q. About how many hours would be consumed in the examination of 500 passengers at that time?

A. If would be an all day job.

The Court: I suppose you had to take greater pains with the steerage on account of the greater proportion of poor people who come that way?

[fol. 237] The Witness: Cabin passengers, who are high class people, bankers, lawyers, doctors and what not, we assumed would see that they presented nothing out of the ordinary, and they required practically no examination. If, however, a person did not belong in that category he would stand out so much that there was no difficulty in apprehending him; as we went down the scale the examination became more stringent.

The Court: I can see that not only is disease more prevalent among the lower classes of people, but that a person who would be a cabin passenger usually would not come over; he would get treatment on the other side.

Q. Did you mean by your answer that you could ordinarily determine by the outward appearance of the passenger whether or not he was likely suffering from some disease or disability that would exclude him?

A. I am only referring to the method of weeding out from the cabin passengers the few passengers who needed more thorough examination.

Q. In your routine examination did you evert both eyelids to ascertain whether or not trachoma was present?

A. We did it with most passengers especially those who came from districts which had trachoma.

Q. Did you omit that part of the examination in some cases?

A. I used my judgment; but the rule called for the examination of everybody.

[fol. 238] Q. In your routine examination were the passengers required to remove their clothing?

A. In an inspection examination, no.

Q. What other parts of the body did you examine in the routine examination?

A. No other parts than I have mentioned before.

Q. Did you examine each passenger with a magnifying glass to see whether he had ring worm of the nails?

A. It was not necessary; a magnifying glass is not used.

Q. Did you use a microscope?

A. No; that is a laboratory test for suspicious cases.

Q. Did you use an x-ray on board?

A. No, not at all; we sent those to the hospital.

Q. Did you examine each person with a stethoscope?

A. No.

Q. With a fluoroscope?

A. No; those are hospital methods.

Q. I believe you said you also made examinations at Ellis Island of the steerage passengers during that period?

A. Yes, at another period.

Q. About when did you make those examinations?

A. From about 1907 to 1910, 1911, 1912—something like that.

Q. Did you ever make examinations of steerage passengers at Ellis Island on the line between the years 1922, and the present time?

A. Yes, I believe I did. In fact, for one period I was at Ellis Island in charge of the Line work.

Q. About what period was that?

A. I think I was, because we were very frequently back and forth, and I could not tell exactly the year.

Q. Will you please describe what was your method of [fol. 239] examination in your line of work at Ellis Island?

A. The passengers were brought in in a number of lines, and the doctor stood at the head of one line who examined only eyes and a doctor at the foot of the same line who inspected the body, and another very often stood there just to ask the immigrants questions relating to their mental health; and those of whom we had any suspicion at all were marked accordingly and sent to the back rooms, where they were stripped and examined thoroughly. Later on, when immigration became less, we had the men on line to examine eyelids, but they went in the back room and were stripped and examined. If we found any suspicion of disease they were sent to the hospital.

Q. If you did not find any suspicion what was done?

A. Originally, that ended it; but later on they all went to the back room for examination.

Q. From what time did that happen?

A. Five or six years ago; I am not certain about the year. At any rate, it is a small part of the many years in which I have been doing that work.

Q. About how many did you customarily examine at Ellis Island, you and the doctors who assisted you, during the period 1922 to 1927?

A. I could not tell you about the years. I can only tell you that in heavy immigration in 1907 and 1908, we had as many as 5,000 a day. We ran four or five or six lines with many doctors doing it.

Q. Take 1902, 1903 and 1904; immigration was quite heavy, wasn't it?

A. If you will let me assume it was heavy, if you can tell [fol. 240] me how many thousands came in that year I can give you a better answer.

Q. At least the number was very considerable?

A. I cannot tell you. I am willing to accept your figures, though.

Q. In an ordinary routine examination at Ellis Island did you use the x-ray machine?

A. No.

Q. Did you use the stethoscope on every person?

A. In the back room, yes.

Q. I mean on every person in the line?

A. In the period when we sent all of them into the back room we did it on all. Before that we did not.

Q. Did you use the magnifying glass?

A. We never used a magnifying glass.

Q. I mean the microscope in every case?

A. No; it was only used on those individuals who showed symptoms of disease, and the microscope was used to confirm the presence of that disease.

Q. Isn't it the fact that the elaborate examination which you described yesterday as being required to determine with certainty the existence or non-existence of a disease was used only in those cases which you had set aside as suspicious and required further examination. That is true, isn't it?

A. Yes.

Q. And those whom you did not suspect before the period you spoke of were immediately allowed to go free, and afterward if you did not suspect anything, after the nude examination, they were allowed to go free?

A. If I found nothing on the nude examination they were allowed to go.

[fol. 241] Q. But even in the nude examination you did not use the laboratory tests and things of that sort?

A. No; only on those *on* whom we found had clinical evidence of disease on examination.

Q. Did you make an examination, even on board ship or at Ellis Island, by the use of the Wasserman test, as to every alien?

A. The Wasserman test to determine syphilis was only used on those people who presented scars on the genital organs or those who presented clinical evidence of syphilis of which we were not certain enough from their appearance to make such a diagnosis. We made no routine Wasserman test.

Q. And, as I understand you, on board ship the aliens were not in any case required to be stripped, except possibly in cases where you suspected some disease to exist?

A. In exceptional cases.

Q. So that you could not make any careful examination of genital organs or things of that sort?

A. Of cabin passengers, you mean?

Q. Yes.

A. No.

Q. Was that also true at Ellis Island until the period when you required all aliens there to be stripped?

A. Yes; because before that period the number of immigrants that came to Ellis Island—well, I have examined 5,000 a day and more. I need not tell you when you got home we were dead; that was the reason for the examination abroad.

(Whereupon an adjournment was taken to July 14, 1930, in Chambers.)

[fol. 242] New York, July 14, 1930—10.00 a. m.

Met pursuant to adjournment.

HENRY FRIEDMAN resumed.

Cross-examination continued.

By Mr. Tibbetts:

Q. Doctor, do you consider that in a most scrupulous medical examination it is possible to ascertain with entire

infallibility whether a disease such as we have been discussing in this case exists or not?

A. There is no such thing as infallibility.

Q. What would be your opinion as to the percentage of error, as a general matter, in the course of a very careful medical examination?

Mr. Schulman: Your Honor, I object to this question. It is calling for answers on the part of the witness as to entirely new matters, and is not proper cross examination at all. If the plaintiff wants to make the witness its own witness, that is a matter for him to decide. But I do not think he should ask this type of questions on cross examination when there has been absolutely nothing in the evidence which lays a foundation for such cross examination.

The Court: Objection overruled.

Mr. Schulman: Exception.

A. I simply have to say again there is nothing infallible in medicine or any science, and that the percentage of [fol. 243] error in scientific matters is always considerable.

Q. Would you say it would be as much as one per cent. For instance, one out of a hundred?

A. I should not want to be quoted statistically.

Q. What would be your own best judgment? You have had long experience.

A. If you don't pin me down to figures I will say it is considerable. I think it is probably more than one per cent.

Q. You stated in your cross examination that in the course of examinations on shipboard and at Ellis Island on arrival of ships, you frequently had a large number of immigrants to examine?

A. Yes.

Q. At other times did you have a considerably smaller number?

A. Yes.

Q. On occasions when you were not pressed for time what would you say on the average was the length of time used in the examination of incoming immigrants?

A. I want you to qualify that by saying that the cabin work is not—the cabin passengers which I said the other day includes all sorts of passengers, and immigrants are put in an entirely different class. They go to Ellis Island

now, unless they have received examination abroad by our officers.

Q. Whatever their classification, about what length of time would you and your associates use per person in examining on shipboard?

A. If they are passengers in the cabin, then a very, very short time.

Q. Would you say a matter of one or two minutes?

A. Yes.

[fol. 244] Q. In the examination at Ellis Island when there was not a rush of business, what would you say would be the length of time per person in your routine examination as distinguished from special examinations?

A. In Ellis Island the aliens are all stripped and examined physically, regardless of number.

Q. I understood you to say in the earlier years they were not stripped?

A. At that time we had as many as 5,000, and we could not possibly have enough doctors to examine 5,000 a day. It would require perhaps 100 doctors. It would be out of the question. There would be no examination at all, practically; it was the most slipshod sort of an examination, and it was for that reason we established the policy of examination abroad.

Q. I think you said that the practice of stripping the immigrants has been enforced some three or four years?

A. Yes.

Q. Did you also strip the women as well as the men?

A. Yes; we had women doctors. Many of the male doctors did not go near them at all.

Q. Since the practice of stripping immigrants took place, about how long on the average would you say was consumed per person in the routine examination as distinguished from the further examination of suspected cases?

A. I think the distinction there is not a correct one. When we take the alien into the examination room he is stripped and gone over thoroughly, and if any suspicious thing is found he is sent to the hospital for observation, but the examination consists of what I outlined before. It is [fol. 245] done piecemeal, and may take anywhere from half an hour to a great deal longer or less, depending on the condition of the alien.

The Court: Does one doctor pass on everything?

The Witness: No; we have a number of doctors. We try to divide it up. A man does the eyes; another man does physical; another examines for venereal diseases, and so it goes.

Q. Would it be possible in many cases to make such an examination in the course of a few minutes?

A. In some cases I should say yes.

Q. In regard to the women, are they examined by a woman doctor or by nurses?

A. No; women doctors; we have nurses there to assist them, as we have men orderlies to assist us.

Q. How many women doctors do you have employed there?

A. Three.

Q. They examine only at Ellis Island?

A. Only at Ellis Island; not on shipboard.

Q. Do the men doctors examine the women also?

A. Not at all, except for inspection on the line, as they pass by into the examination room, for the eyes or mental, but no physical examination.

Q. You described during your direct examination quite an elaborate system of examination for the various diseases that were inquired about. Did you mean to indicate by that that in your opinion in order to make a competent examination a physician would have to go through such an examina-[fol. 246] tion as that as to every case of a person presented to him for examination?

A. It might interest you to know that since the establishment of the so-called technical offices abroad, the examination they do over there is even more elaborate than the one outlined.

Q. Do you mean to say that the elaborate course of examination that you have described in answers to questions put to you on direct examination would be necessary in order to constitute a competent medical examination in the case of every individual who is presented for examination?

A. Oh, yes. And, if I may say, I consider that a competent examination in any case—to be a competent examination one must go through the body complete.

Q. What is your conception of the competent examination that is required to be made of aliens before their departure?

A. My conception of complete examination is——

Q. Is that the basis of the certificate upon which you state a given disease might have been discovered by a competent medical examination before departure?

Mr. Schulman: I object to the question as to form, because I think it contains an ambiguity. There has been no testimony by the witness on direct that the examination which he described would be a competent examination for the purpose of detecting diseases if they were detectable. I think it is an improper question; it is ambiguous, and for [fol. 247] that reason I object. If he asked the witness a question as to whether he thinks that is a competent examination or not, I think that is perfectly proper.

Mr. Tibbetts: I have already asked that.

Mr. Schulman: I object to the question as containing in it an ambiguity. The witness cannot answer that question.

The Court: I think he can answer it. Objection overruled.

Mr. Schulman: Exception.

A. I think that every certificate or every examination is justified by the certificate, or the certificate justified by the examination; in other words, nothing is put in the certificate concerning an alien than would have been put in by a very competent or complete medical examination for that condition.

Q. My understanding, then, is that from your viewpoint, if a disease is discovered at this Port, and in your opinion it has reached such a stage of development that an examination of the character which you have described in your direct examination might have detected it——

Mr. Schulman: I object to the form of the question as stating things which the witness has not testified to on direct.

(Question read.)

Q. (Continuing:) You would then certify it might have been discovered by a competent medical examination before [fol. 248] departure, before embarkation.

Mr. Schulman: I object to the question on the ground it states a viewpoint of the witness specifically which has not been stated by the witness in any testimony so far given. It is an absolutely improper question.

The Court: Dr. Friedman is one of the most capable witnesses I have seen.

Mr. Schulman: I do not doubt it.

The Court: If there is anything subtle or misleading he will detect it.

Mr. Schulman: It is not on the ground of subtlety; it is on the ground it is a representation to the witness of testimony which has not been given yet.

The Court: Then, the doctor can say so. Objection overruled.

Mr. Schulman: Exception.

(Question read.)

A. Yes.

The Court: Does that mean, Doctor, that although a more cursory examination in your opinion would not have revealed the existence of the disease at the time of embarkation, that you would nevertheless certify that the disability or disease was discoverable at embarkation where the use of the microscope and other facilities described by you in your [fol. 249] direct testimony would have revealed the condition?

The Witness: I can only say that in our examination before we certify such a condition to an alien the whole question is given consideration, and the question of its detectability or rather the question of its presence before embarkation is considered. We would not have issued the certificate if we felt it was of such recent origin as not to justify such a statement. All the conditions have been of long standing; not days or weeks, but months or years. We are subject to the same lack of ability to discover very incipient cases as any other group of medical men, and I personally would not certify anything unless it had been there.

Q. Did you, for instance, certify cases which were characterized only by a positive reaction to the Wasserman test?

A. All this abnormal systemic condition is taken into consideration, when an alien is sent to the hospital for suspicion of syphilis because he has a scar or does not answer up well or because his heart is unduly enlarged; then I suspect that a large part of those conditions I have just mentioned are due to syphilis, and we give the Wasserman test, and if it is positive this particular formula is made and

it is a question of uncertainty as to clinical findings or the certainty of presence of a blood change.

[fol. 250] Q. My question is whether you certify those cases as cases which might have been discovered by competent medical examination before embarkation?

A. We do not.

Q. You did for a time, didn't you?

A. I do not know that we ever did.

Q. Do you know anything about a regulation by the Surgeon General's office directing the Public Health Service doctors not to certify such cases?

A. Yes. The point about it was that it should not be certified as syphilis, but only as a laboratory finding with an explanation of its possible meaning.

Q. And it is provided also that you are not to certify it might have been discovered by competent medical examination abroad?

A. I presume that is so.

Q. And the reason for that was that it was a condition that was difficult of discovery?

A. Yes, and that a greater significance given to it than the one given was not there.

Q. You have stated your conception of what a competent medical examination consists of and the conditions or the circumstances under which you would make a certificate of discoverability before embarkation. Is that your understanding from your experience with other doctors who examine at Ellis Island and on board ships, that they act on the same principle?

A. It is very hard to say. I could say very honestly that in a group of doctors a great many of whom come and go, we find varying degrees of alertness and competence and even of sincerity, and you find in every walk of life when a group [fol. 251] of people are employed, you find very radical variations, and we find it, too.

Q. What I want to know is whether the principle which actuates you in your opinion actuates the other doctors as well?

A. The principles are the same; the results are not.

The Court: Are there medical regulations covering the Public Health Service doctors concerning certificates of discoverability before embarkation?

The Witness: We have what we call a manual. I wrote the manual for the Boarding Division, and the manual for the line and section, and the manual for the hospital, going through every detail of the procedure with respect to this work.

The Court: Are those in evidence?

The Witness: No; they are office manuals.

Mr. Tibbetts: They could be put in evidence. But I had supposed the Court would take judicial notice of them.

Mr. Schulman: Of course, I am continuing my objection to this entire line of testimony.

The Court: Yes. We will have to adjourn now as I have to go into Court.

(Adjourned until 4.00 p. m.)

[fol. 252] Afternoon Session, 4.00 p. m.

HENRY FRIEDMAN resumed.

Cross-examination continued.

By Mr. Tibbetts:

Q. Doctor, will you state whether or not with respect to some of the diseases that have been discussed in your examination it would be possible to determine merely by a careful visual examination whether or not there was suspicion that such disease existed?

A. Yes.

Q. Please state the diseases which we have discussed that you would place in that category?

A. I should want to say most every disease we discussed would give visual suspicion of its presence, or might give visual suspicion.

Q. Would it ordinarily do so?

A. Well, I can only say it might give it; I do not believe I could answer more definitely than that. In fact, we place defendants on inspection for the discovery of suspicious cases.

Q. I understand that to be your practice here. When you have a suspicion that a disease exists you go into a more careful examination and diagnosis?

A. Yes.

Q. And isn't it true that your very careful diagnosis and examination which you have explained, including laboratory tests is made primarily for the purpose of ascertaining with a certainty that the disease did exist, on account of the fact that you would not certify a case unless you were satisfied?

[fol. 253] A. That is obvious. The careful examination in hospital and laboratory is made so that we can determine the presence of disease and be in a position to certify thereto.

Q. What I mean is this very careful examination is resorted to in order that you may be certain it exists, rather than merely to ascertain the possibility of its presence. Is that true?

A. No. The inspection, I would say, would be to determine the possibility, and having suspected the presence of the condition the further examinations in the hospital with all the machinery that goes with it is made to confirm the presence of that disease or to be sure it does not exist.

Q. In other words, it is your job to ascertain with certainty whether a prohibited disease exists or not?

A. Before an official certification, yes.

Q. Have you ever acted as an examiner for Life Insurance Companies?

A. Never.

Q. Were you ever examined for life insurance?

A. Yes.

Q. Those examinations usually do not require more than five or ten minutes, do they?

Mr. Schulman: I object to that question as again calling for an answer foreign to the issues in this case.

The Court: How could the doctor know unless he was the subject of such an examination?

Mr. Tibbetts: He said he had been the subject of such an examination.

Mr. Schulman: I do not see what bearing such an ex-
[fol. 254] amination would have on the issue in this case, either to set up a standard or anything else.

The Court: You asked several questions, I think, tending to disparage the competency of the examination on ac-

count of the speed with which it was conducted. The objection is overruled.

Mr. Schulman: Exception.

A. Those examinations take you longer than five or ten minutes and include urine and blood pressure examinations. That does not include industrial insurance, as to which there is no examination at all.

The Court: You mean selected lists?

The Witness: Yes.

Q. You mean to say the Life Insurance Company examinations you have undergone have been as extensive as you suggest——

A. I underwent one twenty years ago; but I know life Insurance examinations now are very thorough and include urine examination and blood pressure.

Q. How do you know what they include if you have not been examined in twenty years?

A. My general knowledge of the subject of life insurance examination.

Q. All I can say is that has not been my experience. Is it not a fact that a very large percentage of people have tuberculosis of some form in a latent state or have the scars of tuberculosis?

A. Yes; it is considered, in fact, by specialists in tubercu- [fol. 255] losis that there is no one who has not at one time or another suffered from an infection of tuberculosis. There is an old German saying to that effect which is quoted very widely.

Q. Since the American Public Health Service doctors have been attached to foreign consulates, do the doctors at Ellis Island still certify on finding the existence of a disease, that it might have been discovered by an examination before embarkation?

Mr. Schulman: I object to the question as calling for an answer that is incompetent, irrelevant and immaterial, what they did after the years we have involved in these cases.

The Court: I will take it.

Mr. Schulman: Exception.

A. Yes. The formula of certification is somewhat different, but they do still; the only difference in procedure is

that if I suspect on my examination that the medical officer abroad has passed by a case, that is still the subject of such a certification; in any case, he goes to Ellis Island for this intensive examination and for the special consideration by a Board of Medical Examiners.

Q. What is the form of your certificate now?

A. One which might have been detected by a competent medical examination and which was present when this alien was given a competent medical examination abroad. [fol. 256] Q. And therefore you do not certify that the condition might have been discovered by a competent medical examination abroad?

A. No. In all cases that were examined by our medical examiner abroad we certify they did receive a competent medical examination abroad.

Q. That is, you assume the examinations now conducted by American doctors are competent medical examinations?

A. Yes.

Q. That is, as I understand you, you must not in any case certify at the present time that the disease might have been discovered before embarkation?

A. I would not say that. I simply say we are using now a different formula for the certification of these diseases.

Q. And the certification is what you said, that is that the subject was given a competent medical examination before embarkation?

A. Yes.

The Court: Is every incoming immigrant now given an examination abroad?

The Witness: There are still a few ports where they are not. Countries like France refuse to have medical officers abroad. Those few are treated as they were before, and some who have failed to go there for some reason or other.

Q. Will you again please read the form of certificate that is now used in cases where examinations have been made by American doctors before departure?

A. If this alien was given—in fact the word "was" in large letters indicates that is the form to use—was given [fol. 257] a competent medical examination at the port of embarkation.

Q. And that the disease was not detected. Do you add that?

A. No.

Q. You heard the testimony of Dr. Dandini in this case?

A. Yes.

Q. What was your impression from your observation and hearing of the testimony of Dr. Dandini as to his fitness for the position which he was occupying?

Mr. Schulman: I object to this.

The Court: I think this is going very far afield.

Mr. Schulman: If the plaintiff wants to call the doctor as an expert and its own witness——

The Court: I doubt that he could even do that, call another doctor as part of your own case, who listened to Dr. Dandini and have him say whether Dr. Dandini was a good doctor. He gave his qualifications.

Mr. Tibbetts: I withdraw the question.

Q. Doctor, I would like to put to you a hypothetical question. Assume, if you will, that a group of immigrants had before departure been subjected to the following examinations before a competent doctor or doctors: first, an examination in a nude condition occupying say, on the average of ten minutes for each person, from one to three or four weeks before departure, at which the stethoscope and microscope were at hand for use in the discretion of [fol. 258] the examining physician and clinical laboratories were available, equipped with microscope, the means of giving the Wasserman test and other modern laboratory equipment to which suspected cases were sent when they showed disease; second, an examination a day before sailing with the head, face, neck, chest to the waist, hands and genital organs exposed, occupying on the average of three or four minutes, at which the stethoscope and magnifying glass were at hand for use in the discretion of the physician, and clinical laboratories were available as before stated; and, finally, on the day of sailing a more summary examination by a joint board of several doctors, consisting of an examination of the normally exposed parts of the body, with particular attention given to any who had been noted as of doubtful physical soundness, with the result that all who were clearly diseased or disabled and all who were suspected by the examining physicians to be afflicted with any disease or disability which might bar them under the immigration laws of the United States from

admission to the United States were rejected as passengers, would you say that those who were allowed to embark had been subjected to a competent medical examination?

Mr. Schulman: I object to the form of the question. It is a very long question, but there are certain things in it which I do not think are clearly supported by the testimony we have introduced.

[fol. 259] The Court: I will allow the question. If they are not supported the answer to the question is worthless.

A. With the one reservation about the few weeks before, I should consider such an examination competent.

Q. You would?

A. With the exception of the time elapsing between the original complete examination and the more summary one.

Q. If you assume that the same persons who were examined from one to three or four weeks before departure were again examined as I have stated in the hypothetical question on the day before sailing, and still again on the day of sailing, then would you say the combined effect of the examinations amounted to a competent medical examination?

A. I want to repeat that I would consider the examination competent, but I want to repeat the four weeks I consider too long an intervening period.

(Discussion off the record.)

Q. At Genoa the first examination was made by doctors attached to the Italian Immigration Service.

The Court: The Italian Government.

Q. And then by the ship's doctors at the emigrant house the day before departure, and again on the day of departure at the pier?

A. I will answer that again that except for the four weeks [fol. 260] interval I think that is a competent examination; but four weeks is too long a period to allow an alien to go without examination.

Q. Would you think anything he might have developed during that period of a few weeks should have been checked up and detected in the examination which I have described on the day before sailing?

A. No; in that period an incipient condition could develop which only that complete examination that you mentioned at first could possibly detect.

Q. Would you say that even if it should appear that the immigrants were examined the day before the departure completely stripped of clothing?

A. An examination with the passenger completely stripped and with the use of the instrumentations we spoke of would tend to confirm the freedom from disease of the alien.

Q. In other words, is it not your judgment that such a course of examinations would be sufficient to determine with a high degree of certainty whether or not it was probable that some of these diseases existed?

A. Do you mean the original examination?

Q. Plus the others?

A. I cannot allow myself to state definitely that the four weeks period between an intensive examination and an embarkation is a short enough period that nothing new can develop. I will say that the examination you outlined of itself is competent is my opinion.

Q. Would you not say that the combined course of examinations would constitute a competent examination?

A. It is not a combined examination. One is a very care-
[fol. 261] ful one and one is a summary one, and between the two a great many things can happen.

Q. Do you have in mind that I stated in my question that on the examination the day before the departure the passengers were examined with their vital parts exposed, with the microscope and the stethoscope at hand at the physician's discretion, and the examinations occupying three or four minutes a person at a minimum, including now, both diseased and undiseased?

A. I hardly know how to answer that question, because I do not consider the presence of these instruments in an adjoining room to be used by the physicians as an indication of their need for use——

Q. You understand I am not asking you to state whether in your opinion such an examination would be sufficient to ascertain with certainty whether disease exists?

A. What is the question specifically, then? What is this particular part of the question.

(Question read.)

Q. (Continuing:) But only as to whether or not it would be sufficient to indicate the probability or possibility of its existence?

A. There will be a sufficiency in respect to probability.

Q. Did you ever serve as a surgeon on board ships?

A. Yes. One time I took a trip to South America a great many years ago.

Q. As the ship's doctor?

A. Yes; but it was not an immigrant ship, and going the other way, not coming back.

[fol. 262] Q. Doctor, do you sometimes discover diseases existing in immigrants since American doctors have been in attendance for examination at the American Consulates abroad?

Mr. Schulman: I object to the question on the ground it is incompetent, irrelevant and immaterial.

The Court: I will permit it.

Mr. Schulman: Exception.

A. Yes, I do.

Q. Do you recall a case that occurred in 1928, where twelve immigrants came in suffering from trachoma who were subsequently excluded after having been examined by American doctors abroad?

A. I do not remember those twelve. I know there have been cases so found and so excluded.

Mr. Tibbetts: I think that is all.

Mr. Schulman: I expect to recall the witness for re-direct examination, but before doing so I wish to make clear for the record that we do not waive any objection on the part of the Government to the admission of any evidence before this Court which has not been offered to the Secretary of Labor and which does not form a part of the administrative files which are now before this Court. My sole purpose in calling the present witness on direct and recalling him on re-direct is to avoid, if possible, the Court obtaining any [fol. 263] subconscious impression which may be some factor in the Court's determination concerning the fairness of the Commissioner's decision with respect to the imposition of the fine on the record which is before the Court.

The Court: I am disposed to agree with you on that. I am just taking it because the jury is waived.

Mr. Schulman: What I have in mind is this: it may be the Government is a bit over-anxious in being concerned about the possibility of the Court obtaining some subconscious impressions which may work into the Court's consideration concerning whether or not the hearing before the Secretary is fair; and it is only to overcome such impressions that the witness is now being questioned again, although, as I say, I believe the whole line of testimony is irrelevant and immaterial.

The Court: All right; you have that reservation.

Mr. Schulman: It is very important that I be understood as not waiving any objection on the ground previously stated.

The Court: You may examine the witness with that reservation.

(Discussion off the record.)

Mr. Tibbetts: I offer in evidence Rule No. 15 of the Regulations of March 4, 1927, of the Department of Labor, attached to printed pamphlet of that Department covering the laws of 1917 and 1924.

[fol. 264] Mr. Schulman: I object to the offer of this regulation in evidence on the ground that it is incompetent, irrelevant and immaterial and is not admissible for the plaintiff to sustain its burden that it gave competent examinations, if any of this evidence is going to be admissible for such a purpose. In other words, any regulation providing how our doctors shall be guided, cannot be relied on by the plaintiff to support its burden that it gave a competent examination abroad; and that is on the assumption that all this evidence is admissible.

The Court: I will take it.

Mr. Schulman: Exception.

Mr. Tibbetts: I would like to ask the Doctor a question on this.

By Mr. Tibbetts:

Q. Doctor Friedman, I show you a pamphlet entitled, "Regulations Governing the Medical Inspection of Aliens, August, 1917". Are you acquainted with that document?

A. Yes, I am.

Q. Is that the same one that is now in force?

A. I believe it is. It is being revised now.

Q. According to your best recollection was that in force from the time it was put out up until the present revisions go into effect?

A. It was in force except for the circulars coming through or other modifying material.

[fol. 265] Mr. Tibbetts: I now offer in evidence the following portions of Regulations Governing the Medical Inspection of Aliens put out by the Treasury Department under date of August 1, 1917:

Paragraphs 4 to 7, inclusive; paragraph 37; paragraph 42-A; paragraph 54; paragraph 58; paragraph 69 and paragraph 81. I would like also to reserve the right to make an offer of earlier regulations of the Department of Labor showing that the same rules with respect to incorporating the rules of the Surgeon General were in effect the same as during the period covered here.

The Court: All right.

Mr, Schulman: I note an objection to all of the paragraphs offered on the ground that they are incompetent, irrelevant and immaterial and also on the ground there has been no showing by the plaintiff that in the various cases the administrative files of which are now before the Court the regulations either of the Secretary of Labor or else of the Treasury Department have not been complied with.

The plaintiff has offered absolutely no proof, as a matter of fact, to show that those regulations are not being complied with. I do not see how those regulations are in any way binding without some proof offered by the plaintiff to show that those regulations were of such binding effect that if the fact were established they were not followed [fol. 266] therefore it's an improper procedure, with the result that the exclusion of the alien was erroneously determined and the imposition of the fine by the Secretary of Labor was erroneously and illegally made.

The Court: All right; go ahead.

Mr. Schulman: That is the ground of my objection.

The Court: I will overrule it.

Mr. Schulman: Exception.

Are you finished with the witness?

Mr. Tibbetts: Yes.

Redirect examination.

By Mr. Schulman:

Q. Doctor, with respect to the hypothetical question which was asked you by plaintiff's counsel, would you say that such an examination or series of examinations would be competent if, as a matter of fact, the stethoscope, the x-ray, the miscroscope, urine analysis, or any other instrumental method of ascertaining disease was not, as a matter of routine, employed in order to make certain whether or not a disease or mental defect was present in an individual?

A. You mean if all these facilities were actually not used?

Q. Yes; as a matter of fact were not used?

A. If they were not used it could not be a complete examination.

Q. Then, am I correct in understanding when you answered the hypothetical question which was propounded [fol. 267] by plaintiff's counsel to you, your answer would be based on the fact that on the assumption that those instruments were actually used as a routine in order to determine disease or mental defect or physical defect?

A. I believe Mr. Tibbetts did in the hypothetical question say if they were used.

Q. The hypothetical question, as I recall it, stated that if such instruments were at hand and suspicious cases——

A. No, in the first examination I believe Mr. Tibbetts said they were used, and were available thereafter.

Q. Assuming for the moment that they were used at the first one, you would say the first examination would be competent, is that correct?

A. Yes.

Q. In other words, the examination made by the Italian immigration doctors would be competent if they were used?

A. Yes.

Q. But if they were not used, as a matter of routine, that such an examination would not be competent; is that correct?

A. Yes.

Q. Now, with respect to the examinations at the emigrant house the day before sailing, if those various instruments I have mentioned were not used as a matter of rou-

tine, would you say the examination at the emigrant house was competent?

A. I would say if the time elapsing between the original examination and the subsequent examination was short it would be sufficient.

Q. By "short" how much time do you mean to signify?

A. I should say offhand a few days.

Q. And if it was longer than a few days you would say the original so-called competent examination would not be [fol. 268] conclusive to establish whether or not an immigrant had a disease or a physical defect or a mental defect a few days prior to embarkation?

A. If the period was as long as Mr. Tibbetts stated, four weeks, I should not consider that time——

Q. With respect to two weeks would you consider that a long period?

A. I should say it would graduate down to the period of embarkation in inverse proportion.

Q. If the examination at the pier was performed without the routine use of the various instruments I have mentioned, would you say that such an examination would be competent?

A. If the pier examination were a primary one it would be incompetent.

Q. Supposing it followed an examination at the emigrant house at which those instruments had not been used as a matter of routine procedure?

A. If the embarkation examination was a primary one and without all the instrumentation referred to, it would be incompetent; but if it were a secondary examination it would depend on the time which elapsed between the primary and competent one and the second or cursory one.

Q. According to Dr. Dandini's testimony which you heard, and the testimony of other doctors, the testimony is that you had examinations by officers in the Italian Immigration Service; you had examination by the company's ship doctors at the emigrant house the day before sailing, and you had a final and last examination at the pier before a so-[fol. 269] called commission of which several of the ship's doctors were members. I believe there has also been some testimony, if not by Dr. Dandini then by other doctors abroad, that in some instances examinations were given at the company's offices some time before sailing; that is more

than a few days, probably several weeks. Now, the examinations which are given several weeks before the embarkation date you testified in effect are not conclusive because within the period of a few weeks a condition may develop. That is correct, is it not? An examination given a few weeks before sailing, I mean.

A. If the primary examination were in effect competent and too much time had elapsed, a few weeks, if you please, it would not be conclusive at the time of sailing.

Q. The examination at the emigrant's house was given, as I understand it and as I think you heard Dr. Dandini testify, a day before embarkation, possibly two days. Now, with respect to that examination at the emigrant house, if these various instruments were not used as a matter of routine, would you say that that examination with relation to the primary examination made several weeks before was a competent examination?

A. No. If the time between embarkation and primary examination was a long one a further complete examination should be made, whereas if the time was a short one, a few days before, that would be sufficient.

Q. With respect to the examination at the pier, and there again you heard Dr. Dandini's testimony, and with reference [fol. 270] to the time that examination was made after the examination at the emigrant house, would you say that if no instruments were used at the pier the examination would be competent, if, as a matter of routine, no instruments had been used at the emigrant house the day before when the immigrants were being examined there?

A. The examination on the pier would be just as incompetent as the previous examination on the same basis I stated before, if too great a time had elapsed between that examination and the primary or complete one.

Q. Now, with respect to abnormal systemic condition about which you testified yesterday, I believe there has been some confusion. Will you kindly make clear just at what time, according to your best recollection, the certification abnormal systemic condition came into practice among public health surgeons at Ellis Island, and also explain what that certification means, and what its purpose is with particular reference to the purpose of the Wasserman test and what the Wasserman test is supposed to show?

A. The abnormal systemic condition certificate was instituted a few years ago to acquaint the lay immigrant inspectors with the fact that the alien in question is suspected of having had in the past syphilis and having latent syphilis present, which is undiscoverable because there are no bodily symptoms showing, and that this Wasserman test has a broad reaction which medical men have discovered which, when positive, when it ranges up to plus 2 or plus 4 indicates the presence of this latent blood condition indicative of [fol. 271] syphilis and not certified as syphilis only because there is no clinical evidence of that disease.

Q. Just describe what would be the clinical evidence which you say the lack of necessitates the use of the Wasserman test?

A. A man would not have the first period, the chancre or the secondary or eruptive period or the third or tertiary, but he does have on testing his blood a sensitiveness to the mixture of his blood with either syphilitic tissue or with material used in lieu of syphilitic tissue in testing the blood for syphilis.

Q. What are the symptoms which must be present for you to resort to the use of this Wasserman test? What would be the physical signs or mental signs, if any, which would make you public health surgeons resort to the Wasserman test in order to make a check up?

A. There may be no physical symptoms. The test is used if we feel from the history and from some other manifestations there may be syphilis.

Q. Just supposing we take the manifestations.

A. Either from history or occupation of the alien—seamen are supposed to have a great deal—or an individual who presents very definite mental symptoms, perhaps unstability or psychopathic personality, we test his blood as a routine measure together with other tests, and if we find that he presents this blood reaction, which is called the Wasserman reaction, we certify as such, because medical men feel that when a person has a plus four Wasserman [fol. 272] test even though the other examinations show that he has not had it, we nevertheless feel he ought to be treated as such and given active treatment against syphilis.

Q. As I understand in syphilis there may be physical manifestations, such as hardening of the arteries, enlarging of the heart valves, and various other things?

A. Yes.

Q. I wish you would describe some of those things which would be sort of signs indicating the presence of syphilis and thereby necessitating the application of the Wasserman test as a check up?

A. In a young man, I should say, around forty, who has hardening of the arteries or of the aortic area of the heart, those two signs are indicative of a syphilitic lesion; likewise if there are certain reactions which are not definite of any particular disease, they are considered suspicious, and certain changes in behavior, some people who have been stable for some time become unstable at that time, although no other signs are found; and if we find the Wasserman reaction we feel we have struck the causes of these reactions and in private practice they are given anti-syphilitic treatment.

Q. Will you briefly state what the Wasserman test is?

Mr. Tibbetts: I object to that as immaterial. They don't even certify on Wasserman test cases now.

Q. Let me ask the witness that: is that a fact that at the present time they do not make any certification of systemic [fol. 273] condition; I mean abroad, a certificate of discoverability.

A. I do not remember ever seeing any.

Q. Would you say there never were any such certificates made by doctors?

A. I do not know of any myself. I have never seen any made, but that they have not been made I am not certain.

Q. What is the present form of the certificate?

A. The purpose of such a certificate is to call the attention of the immigration inspectors to the fact that this person may with this condition develop some patent symptoms of syphilis. It is only a question of "may".

Q. Is it not a fact that if at Ellis Island by recognition or apprehension of symptoms of the type you have just described, with a supplemental application of the Wasserman test, examining doctors in foreign ports of embarkation would be just as able to discover the abnormal systemic condition as our own public health surgeons?

A. You mean if they made a Wasserman test?

Q. If they had those symptoms which would indicate the necessity of a Wasserman test and made the test, wouldn't

they have the same opportunity of discovering the systemic condition as our public health surgeons here?

A. These symptoms are often very nebulous, and it is only after intense clinical inquiry they may bring forth the condition or the necessity for such a test.

Q. Does not that intense clinical inquiry depend on the skill of the doctor who is examining and his general knowledge of syphilis and its manifestations?

A. I should say it is not entirely skill; I should say in [fol. 274] all sciences it is a "hunch" perhaps; I should say skill only in respect to making an examination.

Q. You would say then that a doctor who is very cautious and careful would get a hunch which would really be a suspicion of syphilis, isn't that so?

A. I think they would; and on the other hand, probably a great many would think they were sufficiently borderline cases and pass them by.

Q. Then they would be exercising a judgment with respect to the Wasserman test?

A. I think the judgment is exercised.

Q. Is the Wasserman test today and during the period in question in these cases was it recognized by the medical profession generally as a reliable indication of syphilitic condition of an individual, even though there are not the so-called clinical evidences of that disease?

A. A positive Wasserman is considered to be very good evidence of syphilis; but a negative Wasserman does not mean he has not syphilis.

Q. Will you kindly explain to the Court briefly just what the Wasserman process is and how a doctor having applied that process would come to the conclusion?

A. Do you mean the laboratory method of doing it?

Q. Yes, in a brief way, the method, and the object of the method, so that we can understand how the method reveals the presence of that disease?

A. Blood serum is taken from the arm of the patient and mixed with syphilitic tissue, and a precipitation of the blood [fol. 275] element occurs which is indicative of syphilis. Since syphilitic tissue is not easy to get and they have substituted various chemicals which have been found to act the same way. Blood precipitation occurring when the two elements meet is considered to be indicative of syphilis. If

it is very marked it is considered plus 4; if less plus 3, plus 2 and plus 1, and if it is not marked at all, it is negative.

Q. Is this precipitation obtained by the application of centrifugal force?

A. Partly; but in very positive cases it will precipitate without any force.

Q. Am I correct in understanding that unless you do not have the precipitation absolutely by letting the blood stand in the tube——

A. In marked cases there would be; but as a matter of routine it is always put in a centrifuge.

Q. Was there any time you used to certify on Ellis Island syphilis as syphilis without calling it an abnormal systemic condition?

A. Syphilis is syphilis, certainly.

Q. Syphilis classified as abnormal system condition——

A. No, I think you misunderstood; only when we do not find syphilis but only a symptom.

Q. Then, a distinction between a certification of syphilis as such and a certification of abnormal systemic condition would only be that in the first case you would have the clinical evidences of syphilis and in the second case you have other symptoms, the plus four Wasserman?

A. I would not want to say that, no. A certification of syphilis means that a person has been found on clinical examination to present one or more signs, either skin eruptions or something else which we know to be syphilis. In [fol. 276] the Wasserman test we find no symptoms of syphilis whatsoever. We only find this positive blood reaction, and by no stretch of imagination could we call a Wasserman test as syphilis. We can only say it indicates syphilis latent in the body, and for the purpose of prevention we treat it accordingly.

Q. Is it not a fact that in looking for this presence of syphilis by the application of the Wasserman test you are first directed to such a test by suspicion of the presence of syphilis by manifestations, such as hardening of the arteries in a young person, enlargement of the heart, and various other things of that character?

A. Yes. But when you have those conditions you give the person involved the whole gamut of physical laboratory

tests to determine what may be at the back of such conditions you mentioned.

Q. With respect to the examinations which were made of third class passengers during the period involved, 1921 to 1927, inclusive, were those primary examinations anything more than inspection?

A. Rarely.

Q. In other words, it was just a line inspection?

A. They were just paraded before a number of doctors, one perhaps was looking for mental conditions, one for physical and one for eye conditions. Sometimes more doctors watching and sometimes less.

Q. As a result of that examination if any one doctor got a suspicion the individual was turned over to a second doctor for a more thorough examination?

A. They were marked with what we suspected and they [fol. 277] were stripped and given a more thorough examination and then held for hospital examination if they were found to have definite symptoms.

Q. And in that hospital examination every available machinery known to science was used?

A. Yes. The individual was considered to be a patient in the hospital and was given the usual examination any patient in the hospital receives.

Q. Was he given extra examinations and examinations with a stethoscope?

A. He was examined from head to foot with all the instruments at hand.

Q. And am I correct in understanding that that was all done in every case in which a certificate was made by the doctors that a certain alien had a disease or physical defect?

A. No certificate was made, and the rules were never to sign one unless all the methods of determining that disease had been exhausted and the examiner who signed it was certain that in his opinion the alien suffered from the disease which he certified.

Q. With respect to the numbers of people, third class steerage passengers, examined at Ellis Island by the doctors over there, can you give us in an approximate way any idea of how they run from day to day?

A. They vary. In the beginning of the week they are very large, and they usually taper off at the end of the week.

Q. You have mentioned as many as 5,000 a day?

A. In the old days we had 5,000 a day and sometimes 10,000 waiting for examination. I am not sure about the [fol. 278] date you mentioned. I know throughout my experience in Ellis Island, but I am not certain about the dates.

Q. I am talking about the period from 1921 to 1927.

A. I doubt whether the figures were as large in those years.

Q. Well, the particular years 1921 to 1924?

A. In the particular years mentioned they were very large. I know in 1907 or 1908 there were 1,700,000 Italian immigrants alone.

Q. How large was the staff of doctors at Ellis Island at that time who were designated to examine immigrants?

A. Anywhere from ten to twelve.

Q. Just about a dozen doctors?

A. About a dozen, I imagine.

Mr. Schulman: I think that is all with this witness.

Recross-examination.

By Mr. Tibbetts:

Q. Doctor, I would like to be clear on this point: suppose that a given number of persons were presented to you for examination and your task was not to determine definitely whether they were suffering with one of the diseases we have been discussing but simply to ascertain whether or not they were suspected or likely to have one of the diseases. Is it your position you would have to subject each of such persons to an examination by the various instruments you have described, including the stethoscope, microscope, x-ray and other laboratory instruments, simply for the purpose [fol. 279] of determining whether or not they later might be affected by some such disease?

A. I cannot really answer that question, if it was my function to determine definitely for any specific purpose whether that alien was free from diseases.

Q. I am not asking that question. I am asking you to consider a situation where your task was to examine a given number of people and determine whether or not they probably or likely were suffering from some of these diseases.

Do you think that in such a case you would have to examine each person with these various laboratory instruments?

A. Would you modify that by saying in my task of inspection of these people?

Q. I am calling it examination. You can call it what you will.

A. If my task were to inspect, as is my task, I should say that would be sufficient.

Q. For instance, you could tell by a visual examination whether or not it was probable that someone might be suffering from ringworm of the nail or ringworm of the scalp?

A. Yes.

Q. And that would be true of the probable presence of syphilis, wouldn't it?

A. Yes.

Q. Wouldn't it also be true ordinarily of a condition of gonorrhoea?

A. No; gonorrhoea requires a great deal more than a mere inspection.

Q. Frequently you could detect that simply by a visual or manual examination?

A. Yes, sir.

Q. Could you usually do so?

A. Practically, yes. You understand what is meant by manual; it means milking of the genital organs to see if there are any discharges.

[fol. 280] Q. In the case of trachoma wouldn't it be possible by a careful visual examination, including the eversion of the eyelids to detect whether or not it was probable that such a condition existed?

A. Yes, sir.

Q. Would that also be true of valvular heart disease, if the examination consisted of palpation, listening with the ear and other manual examination, as well as visual?

A. Yes.

Q. Would you say the same with respect to tuberculosis?

A. No. I should like to draw the line there, in view of the fact that everybody has had an infection and may have.

Q. Could you detect in those cases whether or not it was possible that there might be some tuberculosis existing?

A. Advanced cases of tuberculosis show evidences in the finger tips and lips and breast, and in fact there are a great many positive cases of tuberculosis noted in that way.

Q. Take the case of the mental condition of a person. Couldn't you tell on very short examination the persons who were normal or nearly so, whether they were feeble-minded or not?

A. Will you say defective instead of feeble-minded.

Q. Defective, yes.

A. That is the method which has been used. A few questions to determine orientation.

Q. Wouldn't it be only in the case of persons whom you strongly suspected of being feeble-minded or defective in mind that you would resort to more elaborate test?

A. The method we used was to take every alien who did not answer up promptly to us, and give him further [fol. 281] examination; we would have sometimes hundreds, and we would weed them out, and at the end keep only the few that needed much more examination.

Q. Is barber's itch a disease the proba-le presence of which you could determine ordinarily by visual inspection?

A. Yes.

Q. Then, if the standpoint from which a physician operates is simply to determine whether or not there is a probability of the existence of these diseases that I have mentioned, do you not think he could make a competent medical examination or medical inspection for that purpose alone without use in every case of the laboratory instruments which we have mentioned?

Mr. Schulman: I object to the form of the question. The examiner should state whether he is referring to an examination or the inspection, because the doctor has made the distinction between an examination and inspection. Your question in the alternative is not proper.

The Court: He may answer.

Mr. Schulman: Exception.

A. Did you ask whether that was a competent inspection?

Q. I termed it a competent medical examination or inspection?

A. I wish to call it inspection. I think the formula you outlined would lead me — say it is a competent inspection.

By Mr. Schulman:

Q. With reference to all the answers you have just given to Mr. Tibbetts on re-cross examination about the proba-

[fol. 282] bility or possibility of discovering the presence of certain diseases, am I correct in understanding that for the purpose of inspection only that would be a reasonable method?

A. Yes.

Q. Could you be absolutely sure that one had not been missed, a case had not been missed, for example, tuberculosis or valvular disease of the heart, where you just made an inspection without the use of the clinical instruments?

A. The percentage of error is very considerable.

Q. In other words, you would say there would be a great probability of error?

A. Yes, I should think we would miss most of them.

Q. Then, if I understand you correct, to make a really competent examination of an individual, you require the clinical instruments, whereas for the purpose of inspection in order to determine suspicious possibilities the visual method would be sufficient?

A. I would say that an inspection is a method of necessity; an examination is a method of election. Inspection was necessary because of the large numbers who came, and we recognized its entire futility and the fact that nothing short of an actual examination such as is now carried out by the public health officers abroad could possibly detect the greatest number of aliens with disease.

Q. Then, as I understand your testimony, the visual method of looking at persons for the purpose of ascertaining their physical condition was a method of necessity and was the best method you had for inspection; is that correct?

A. Under the circumstances, yes.

[fol. 283] Mr. Schulman: That will be all.

Mr. Tibbetts: There is one section I particularly want to call the Court's attention to and that is Section 81.

The Court: I saw that.

STIPULATION AS TO DEPOSITIONS

It is stipulated that in the event all the depositions which were taken abroad in this case have not yet been offered in evidence, including those not offered by the plaintiff,

the defendant wishes to offer them now subject to any objection plaintiff or defendant may see fit to make.

Hearing closed.

New York, July 18, 1930.

Present:

Gaspare M. Cusumano, Esq., of Counsel for Plaintiff.
W. H. Schulman, Esq., Assistant U. S. Attorney, for Defendant.

OFFERS IN EVIDENCE

Mr. Cusumano: Your Honor, we offer in evidence Regulations, Rule 15, page 137, Regulation of February 1st, 1924.

(Considered as Plaintiff's Exhibit 1, 7/18/30, not marked, being a public record.)

Mr. Cusumano: Subdivision D, Paragraph 1, Rule 22. Rules of February 1, 1924, to end of page 149.

[fol. 284] (Considered as Plaintiff's Exhibit 2, 7/18/30, not marked, being a public record.)

Mr. Cusumano: Subdivision D, Paragraph 1, Rule 22. Rules of March 1, 1927; this is found at page 149 of the pamphlet issued by the Department.

(Considered as Plaintiff's Exhibit 3, 7/18/30, not marked, being a public record.)

Mr. Cusumano: Rule 15, page 121, Regulations of July 1, 1925, a pamphlet issued by the Department.

(Considered as Plaintiff's Exhibit 4, 7/18/30, not marked, being a public record.)

Mr. Schulman: The defendant's objection is upon the ground these are irrelevant and immaterial.

The Court: Objection overruled.

Mr. Schulman: Exception. Without waiving the objection as to the admissibility of any evidence which was not before the Secretary of Labor when he considered whether or not to impose the fines in this case, and merely for the purpose of preserving the record in accordance with the possible conduct of this trial, the defendant offers in evidence the following depositions which were taken pur-

suant to the order of this Court, that is a commission issued pursuant to the order of this Court:

The deposition of Dr. Musu Sebastiano, a witness who was examined on behalf of the plaintiff.

(Defendant's Exhibit A, 7/18/30.)*

The deposition of William Gargiullo, also examined on behalf of the plaintiff.

(Defendant's Exhibit B, 7/18/30.)*

[fol. 285] The deposition of Roddolo Giacinto.

(Defendant's Exhibit C, 7/18/30.)*

The deposition of Reale Federico.

(Defendant's Exhibit D, 7/18/30.)*

The deposition of Nicola Izzo.

(Defendant's Exhibit E, 7/18/30.)*

The deposition of Candido Baldovino.

(Defendant's Exhibit F, 7/18/30.)*

The deposition of Duranti Valentini Curzio, who was examined on behalf of the Navigazione Generale of Italy, but whose deposition pursuant to stipulation entered into between counsel for the plaintiff and the defendant is admissible in this case unless it is otherwise inadmissible.

(Defendant's Exhibit G, 7/18/30.)*

The deposition of Alfonso Falso.

(Defendant's Exhibit H, 7/18/30.)*

The deposition of Stanley R. Lawson.

(Defendant's Exhibit I, 7/18/30.)*

The deposition of Eugenio Verando.

(Defendant's Exhibit J, 7/18/30.)*

The deposition of Vincenzo Leanza.

(Defendant's Exhibit K, 7/18/30.)*

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* See note, page 68.

With the exception of the one deposition I have stated was taken on behalf of the plaintiff Navigazione Generale Italiana, in the case of that company against the United States, all of the depositions mentioned by me were taken in the present case.

Still reserving the objection as to the admissibility, I also offer in evidence as one exhibit, certain documents entitled "Bill and Notice for Head Tax, Act of February 5, 1917," and numbered as follows: 68,201, 68,459, 102,740, [fol. 286] 73,582, 103,458, 107,453, 117,207, 127,733, 80,932, 80,923, 73,391, 68,040, 73,582.

(Marked Defendant's Exhibit L, 7/18/30—13 papers.)*

MOTION TO DISMISS EVIDENCE

Mr. Schulman: I now move to dismiss all the evidence which has been adduced before the Court and a jury of one, either documentary or evidence in the form of oral testimony, given by witnesses, upon the ground that all of said evidence so adduced was not before the Secretary of Labor, and that the only evidence which this Court can properly consider in passing upon the issues in this case is the evidence contained in the administrative files of the Department of Labor, which are in evidence before this Court.

The Court: I am inclined to grant that motion but I will reserve decision on it pending briefs.

PLAINTIFF'S MOTION FOR DIRECTED VERDICT

Mr. Cusumano: I am going to move now on the evidence thus far adduced, and on the record of the case before the Secretary of Labor, and upon this evidence that was adduced at the trial, I move that your Honor direct a verdict for the plaintiff.

The Court: Decision reserved.

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* See note, page 68.

DEFENDANT'S MOTION FOR DIRECTED VERDICT

Mr. Schulman: Defendant moves for a directed verdict on behalf of the defendant on the evidence which was before the Secretary of Labor, and which same evidence is before the Court in this case.

The Court: Decision reserved.

(Briefs to be submitted July 25th.)

[fol. 287] This cause came on for further proceedings on the 19th day of February, 1931, present Honorable Robert P. Patterson, United States District Judge. The plaintiff appeared by its counsel Delbert M. Tibbetts, Esq., and the defendant by its counsel Walter H. Schulman, Esq.

The Court: The defendant's motion to strike out all testimony relating to physical examinations of aliens abroad and the testimony of Joseph E. Lynch is sustained.

Mr. Tibbetts: Please note an exception to the order striking out said testimony.

The Court: The testimony of Captain Browning and of Captain Friedman is also stricken out.

Mr. Tibbetts: Before the case is finally closed I wish to offer in evidence the pamphlet entitled "No. 926 General Instruction Consular Diplomatic Serial No. 273", which has been informally before your Honor on the reconsideration of this case.

(Considered as Plaintiff's Exhibit 1, 2/19/31, not marked, being a public record.)

Mr. Schulman: I object on the ground of irrelevancy and immateriality.

The Court: Overruled.

Mr. Schulman: Exception.

Mr. Tibbetts: I also offer in evidence a letter from the Department of State at Washington, D. C., dated October 6, 1930, relating to the foregoing instructions.

(Considered as Plaintiff's Exhibit 2, 2/19/31, not marked, being a public record.)

Mr. Schulman: I object on the ground of irrelevancy and immateriality.

[fol. 288] The Court: Overruled.
Mr. Schulman: Exception.

Decision

The Court: After the close of the evidence in this case briefs were duly submitted by counsel for the plaintiff and defendant, and on the 2nd day of September, 1930, I handed down an opinion. Thereafter on application of the plaintiff I took the case under further consideration, and counsel for the plaintiff submitted a supplemental brief. After a careful reconsideration of the case, including an examination of plaintiff's supplemental brief I adhere to my former opinion.

Accordingly I direct a verdict in accordance with my original memorandum. I direct the Clerk to instruct the jury to return a verdict in favor of the plaintiff on causes of action numbered Ninth, Eleventh and Fifteenth, set forth in the complaint, in the sum of $2,412.63, plus interest on the sum of $200 from June 23, 1923, on the sum of $1,000 from February 28, 1927, and on the sum of $1,212.63 from May 26, 1925, and to return a verdict for the defendant as to causes of action numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14 (accordingly on the instructions of the Clerk the jury returned a verdict for the plaintiff in the sum of $2,412.63, plus interest on the sum of $200 from June 23, 1923, on the sum of $1,000 from February 28, 1927, and on the sum of $1,212.63 from May 26, 1925, and for the defendant as to causes of action numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14).

The Court: The verdict of the jury is for the plaintiff on causes of action numbered 9, 11 and 15 in the sum of $2,412.63, plus interest on the sum of $200 from June 23, [fol. 289] 1923, on the sum of $1,000 from February 28, 1927, and on the sum of $1,212.63 from May 26, 1925, and for the defendant as to causes of action numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14). It will be so entered.

Mr. Tibbetts: I respectfully except to your Honor's direction of the verdict in so far as your Honor directs a verdict to be filed in favor of the defendant upon causes of actions numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14, and to that extent I move to set aside the verdict as con-

trary to the evidence and the law and on the further ground that the verdict is for insufficient damages, and I except to the entry of judgment in accordance with the verdict of the jury.

The Court: Motion denied.

Mr. Tibbetts: Exception.

Mr. Schulman: I respectfully except to your Honor's direction of the verdict in so far as your Honor directs a verdict to be filed in favor of the plaintiff on causes of action numbered 9, 11 and 15, and to that extent I move to set aside the verdict as contrary to the evidence and the law, and on the further ground that the verdict is for excessive damages, and I except to the entry of judgment in accordance with the verdict of the jury.

The Court: Motion denied.

Mr. Schulman: Exception.

[fol. 290] PLAINTIFF'S EXHIBIT NO. 1

Treasury Department, Bureau of the Public Health Service, Washington

Bureau Circular No. 501

December 11, 1926.

To: Medical officers engaged in Immigration duty, and others concerned.

Subject: Certification of aliens having a positive Wassermann reaction.

1. In order to promote uniformity of procedure in the certification of certain aliens coming within the provisions of Paragraph 65, Section 10—"Venereal Diseases"—which cases are characterized solely by a positive Wassermann reaction, the following procedure is prescribed:

2. Aliens without physical signs or symptoms, showing a full "four plus" Wassermann reaction in the blood serum, in not less than two separate tests made at an interval of not less than two days, will be certified as follows: "Found to be afflicted with an abnormal systemic condition characterized by a positive Wassermann reaction in the

blood serum, which affects ability to earn a living (This test is indicative of syphilis)."

3. To all such certificates there will be appended the addi-[fol. 291] tional statement "that owing to uncertainty as to alien's condition at time of embarkation a statement that it might have been detected by a competent medical examination at the foreign port of embarkation is not in our opinion warranted."

4. The statement "that this condition might have been detected by a competent medical examination at the foreign port of embarkation" will not be made in connection with certificates based solely on positive Wassermann reaction, without accompanying physical signs or symptoms.

5. Medical officers will be guided accordingly in the issuance of certificates in such cases.

H. S. Cumming, Surgeon General.

FAC: FWE.

[fol. 292] PLAINTIFF'S EXHIBIT NO. 2

Plaintiff's Exhibit No. 1 (2/19/31)

The following rules and regulations relative to the admission of aliens into the United States are prescribed for consular officers in accordance with section 24 of the Immigration Act of 1924:

Nonquota Students

140. A bona fide student who is at least 15 years of age seeking to enter the United States solely for the purpose of study at a school, college, academy, seminary, or university approved by the Department of Labor may file an application for a nonquota immigration visa. The educational institutions which have been approved by the Secretary of Labor for immigrant students are listed in the pamphlet entitled, "Educational Institutions Approved by the Secretary of Labor," and the numbered series of mimeographed instructions of the Department which contain the

names of additional institutions which have been approved by the Department of Labor.

141. The application may be acted upon by the consul without reference to the Department when the student presents evidence that he has designated and has been accepted by one on the list of institutions, approval of which by the Secretary of Labor has been communicated to the consul by the Department. The prospective student must also establish that he is in possession of sufficient funds or that financial arrangements have been made so that he can [fol. 293] pursue his studies without recourse to labor or business; that his sole purpose in coming to the United States is for study; and that he intends to leave when his studies are completed. A student should have sufficient scholastic preparation and knowledge of English to pursue a regular course of study at the institution he has designated. In case a student has no knowledge of English, but the institution which he plans to attend is prepared nevertheless to give him instruction and is equipped to do so in spite of his lack of knowledge of English, the consul, in his discretion, may issue the nonquota visa if convinced of the bona fides of the case.

142. In the event that a bona fide student applies to proceed to an institution that has not been approved by the Secretary of Labor, the consul may transmit the name of the student and of the school, college, academy, seminary, or university to the Department for reference to the Department of Labor, which will take such action toward its approval as may be deemed advisable.

Validity of Visas

173. An immigration visa, whether nonquota or quota, may be valid for a period of four months and a statement showing the period of validity has been printed upon the visa form. In the event that the consul is of the opinion that the period of validity should be limited in an individual case to a lesser period of time for a reason which appears valid to him, the Department authorizes such ac- [fol. 294] tion in his discretion, a statement of the limited period of time being made upon the visa.

Medical Examinations

162. In order that certain provisions of section 3 of the immigration act of 1917 above referred to, however, may be complied with, it will be necessary that immigrants be required to present medical certificates showing completely, correctly, and conclusively their physical condition, with special reference to tuberculosis, loathsome or dangerous contagious diseases, or mental or physical defects which will affect the ability of the alien to earn a living. If the applicant suffers from a physical defect so affecting his ability to earn a living as to raise a reasonable presumption that he is likely to become a public charge, the examining consul should require, to rebut this presumption, specific proof as to what extent the applicant's support may be assured by contributions from:

(a) His own efforts (for example, by part-time work);

(b) His personal resources (for example, income from investments);

(c) His relatives or friends in the United States or abroad (for example, their incomes and their ability to share).

In weighing the force of the above evidence, if it favors the applicant, the consul should give due consideration to the power of the Secretary of Labor, as provided in sec- [fol. 295] tion 21 of the act of February 5, 1917, to admit certain aliens under bond.

164. Under the restrictions by which steamship companies are governed with relation to transportation of persons who are ineligible to enter the United States on account of reasons of health, the Department suggests that it may be found convenient for consuls at seaports to cooperate with steamship companies in ascertaining the condition of health of immigrants. It should, however, be clearly understood by steamship companies that such cooperation will not entitle them to immunity from any penalties which may be incurred under the immigration laws. The Department leaves to the discretion of consuls the method to be adopted. Obviously no certificate will be accepted unless it has been issued by a reputable physi-

cian and unless it is complete in all respects needful in the premises. The burden of producing such certificate rests upon the immigrant.

165. In his discretion a consul may designate a list of physicians in his district as persons whose medical tests most nearly approximate the final medical test at the port of entry, and may require certificates from any one of these doctors. Among the results that should be gained from the operation of the law are, first, that immigrants shall be of a type acceptable under existing laws and regulations; and, second, that the hardship involved in permitting [fol. 296] a person to proceed to a port of entry in the United States, only to be refused admission on account of his failure to pass the exclusion tests, shall be obviated.

Authority to Refuse Immigration Visa

191. Each applicant must be considered on his own merits and the immigration visa may be withheld only on the grounds of inadmissibility under one or more of the exclusion provisions of the existing immigration laws of the United States. Refusals, in other words, must be based on legal grounds and can not be based on prejudice, sentiment, or personal opinion of the applicant's lack of value to American citizenry.

192. Section 2 (f) of the act enumerates three grounds on which a consul must refuse to issue an immigration visa, as follows:

(a) When it appears to him from statements made by the applicant in the application or from facts disclosed by the documents submitted therewith that the prospective immigrant is inadmissible to the United States under the immigration laws;

(b) When the applicant has failed to comply with the provisions of the Immigration Act of 1924; or

(c) When the consul knows or has reason to believe that the prospective immigrant is not admissible to the United States under the immigration laws.

[fol. 297] Doubtful Cases

195. With the responsibility and authority placed upon consular officers by section 2 (f) of the act, there is no longer any reason to grant an immigration visa to an applicant whose admissibility is doubtful simply because he insists upon it. The intent of Congress is clear on the point of reducing to a minimum the number of aliens to be excluded after their arrival in the United States and forced to make the return journey to their homes. Therefore, if the consul has reason to believe that an applicant is not admissible to the United States under the immigration laws, he must discharge the responsibility placed upon him by Congress and refuse to issue the immigration visa.

196. * * * Again, if an immigrant submits a physician's certificate stating that he is of sound health, but the consul suspects from the appearance of the applicant or from any other cause that such is not the case, he should require the applicant to be examined by another physican, chosen from a list prepared by the consul.

197. If, after such additional examination as seems necessary, the consul thinks it likely that the applicant would be rejected if he should arrive at a port of the United States, he should refuse to grant an immigration visa. It is not necessary, to justify his refusal, that he should be able to demonstrate beyond any doubt that the applicant would be subject to exclusion.

[fol. 298] 203. The following procedure has been successfully used in certain consulates and is offered as a suggestion for use wherever local conditions make it practicable:

204. Visa applications are received and applicants examined during certain hours of the day, say from 9 a. m. to 1 p. m., by employees under the immediate supervision of one consul. Any applicant whose case appears sufficiently questionable as to be likely to result in a refusal is relieved at once of further examination and instructed to return at a specified time in the afternoon. In the afternoon a special board consisting of at least two consuls and an

interpreter, if necessary, examines in detail and passes on the doubtful cases and recommends to the principal officer the action to be taken in each case.

[fol. 299] Form No. 255—Consular. Revised March, 1929. G. I. C. No. 936.

March 23, 1929.

No. —

American Consular Service at ——

Application for Immigration Visa (Quota)

I, the undersigned applicant for an immigration visa, being duly sworn, state that my full and true name is —— ——; that I am — years of age, of the — sex and — race; that I was born on the — day of ——, A. D. ——, at ——; that for five years immediately preceding this application I have resided at the following places, to wit: —— from —— to ——; —— from —— to ——; —— from —— to ——; —— from —— to ——.

That I am married, single, and the name of my wife, husband is —— ——; that she, he was born at —— and resides at ——.

That the names and places of residence of my minor child is, children are: Name: —— ——; address: ——; Name: —— ——; address: ——; Name: —— ——; address: ——; Name: —— ——; address: ——; Name: —— ——; ad-

[fol. 300] dress ——; Name: —— ——; address: ——.

That my calling or occupation is ——; that my height is — feet and — inches; my complexion, —; color of hair, —; color of eyes, —; and that I bear the following marks of identification: —; that I am able, unable to speak —, able, unable to read —, and able, unable to write the (name of language or dialect) —; that the names and addresses of my parents are as follows: Mother: —— ——; address: ——; Father: —— ——; address: ——.

That neither of my parents is living, and that the name of my nearest relative in the country from which I come is —— ——, whose relationship is ——, and whose address is ——.

That my port of embarkation is ——; that I shall enter the United States at the port of ——; that my final destina-

tion beyond such port is ——, and that I do — have a ticket through to such destination; that my passage was paid for by —— ——, whose address is ——; that I intend to join relative, friend, whose address is (City, State, street, and number), ——.

That my purpose in going to the United States is —, and I intend to remain (Permanently or length of time) —; that I have — been in prison or almshouse; that I have — been in an institution or hospital for the care and treatment of the insane; that my father, mother, has, have — been in an institution or hospital for the care and treatment of the insane; that I have — been refused an immigration or passport visa at any American consulate. [fol. 301] That, except as hereafter noted, I am not a member of any one of the following classes of individuals excluded from admission to the United States under the immigration laws: (1) Idiots —; (2) Imbeciles —; (3) Feebleminded —; (4) Epileptics —; (5) Insane persons —; (6) Persons having had previous attacks of insanity —; (7) Persons with constitutional psychopathic inferiority —; (8) Persons with chronic alcoholism —; (9) Paupers —; (10) Professional beggars —; (11) Vagrants —; (12) Persons afflicted with tuberculosis —; (13) Persons afflicted with a loathsome or dangerous contagious disease —; (14) Criminals —; (15) Polygamists —; (16) Anarchists —; (17) Members of unlawful organizations —; (18) Prostitutes —; (19) Procurers —; (20) Contract laborers —; (21) Persons likely to become public charges —; (22) Persons previously deported or ordered deported and permitted to leave the United States voluntarily in lieu of deportation —; (23) Persons previously excluded from admission to the United States at a port of entry —; (24) Persons whose passage paid by another —; (25) Unaccompanied children —; (26) Natives of Asiatic barred zone —; (27) Illiterates —; or (28) Aliens ineligible to citizenship.

That I claim to be exempt from exclusion on account of the class numbered (—), noted above, for the reasons following, to wit: ——.

That I am the father, mother, or husband by marriage occurring after May 31, 1928, unmarried child under 21 years or wife of —— ——, who is a citizen, an alien resi-

dent, lawfully admitted for permanent residence, of the United States, — years of age, and resides at (City, State, street, and number) ——.

That because of the relationship aforesaid I am entitled to and claim the preference provided for in paragraph (1) (2) of Subdivision (a) of Section 6 of the Immigration Act of 1924, as amended May 29, 1928.

That I am the wife of, the dependent child under 18 years of a skilled agriculturist and entitled to and claim preference provided for in paragraph (1) of Subdivision (a) of Section 6 of the Immigration Act of 1924, as amended May 29, 1928.

[fol. 302] That I am aware that Section 1 (a) of the Deportation Act of March 4, 1929, provides in part that the entry or attempted entry to the United States of an alien who has been arrested and deported from the United States in pursuance of law shall be a felony punishable by imprisonment for not more than two years or by fine of not more than $1,000 or by both such fine and imprisonment.

That I am also aware that Section 2 of the Act just cited provides that any alien who enters the United States at any time or place other than as designated by immigration officials or eludes examination or inspection by immigration officials, or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall be guilty of a misdemeanor and upon conviction, shall be punished by imprisonment for not more than one year or by a fine of not more than $1,000, or by both such fine and imprisonment.

Available documents required by the Immigration Act of 1924 are filed herewith and made part hereof, as follows:

Wherefore, I apply for an Immigration Visa as a Quota Immigrant, pursuant to the provisions of the Immigration Act of 1924, as amended.

—— ——,
Signature of applicant.

Subscribed and sworn to before me this — day of —, A. D.

[SEAL.] —— ——

Fee No —.

Fee $1.00 —— of the United States of America.

[fol. 303] PLAINTIFF'S EXHIBIT No. 3

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

File No. 98880/194

May 10, 1924.

Collector of Customs, Port of New York, New York City.

SIR: The department, by letter No. 55395/501, dated April 11, 1924, imposes a fine of $200 in the case of the alien, Giaconda Tommaso ex SS "Conte Verde", June 28, 1923 your No. 9040 and that amount is to be covered into the Treasury. Passage money amounting to $82.08 is to be returned to the alien care of mother, Ronjione Ascenza, Casal, Cassinese, Italy. Form 228 visaed June 13, 1923, with notation "wife of an American citizen". Affidavit of alien sworn to before the American Consul at Naples, Italy, June 1, 1923, setting forth her inability to secure an Italian passport.

Respectfully, —— ——, Second Assistant Commissioner.

YC.

[fol. 304] Copy furnished owners or agents of steamship named above. Lloyd Sabaudo, 1 State Street, New York, N. Y.

May 12, 1924.

B. 55395/501

April 11, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of March 28th, No. 98880/194, relative to proposed fine against the S. S. Conte Verde, arriving on June 28, 1923, for bringing to the United States the alien Giaconda Tommaso, who was certified as being afflicted with feeblemindedness, which might have been detected by means of a competent medical examination at the port of embarkation.

The Line, it is noted, protests against the imposition of a fine, on the ground that the alien was examined prior to embarkation and the defect was not discovered, and that she was felt to be in possession of her mental powers, in normal proportion, as she was efficient in her household duties. In view of the official medical certificate, however, the Bureau finds itself unable to accord favorable consideration to this protest.

It is ruled, therefore, that the penalty as provided in Section 9 should be imposed and you are directed to take appropriate action whereby the sum of $200, now on [fol. 305] deposit on account of said alien, may be covered into the Treasury as an immigration fine. The amount of passage is to be returned to the alien, who was deported.

W. W. Sibray, Acting Commissioner General.

(Signed) W. W. Sibray, Apr. 11, 1924, Mail and Files.

Approved.

E. J. Henning, Assistant Secretary.

JWB.

(Stamp.)

[fol. 306] Recd. Bd. of Immigration, Apr. 7, 1924, Mail and Files.

Address Answer to "Commissioner of Immigration" and refer to number 98880/194.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

April 5, 1924.

Commissioner General of Immigration, Washington, D. C.:

I enclose herewith copy of Board minutes in the case of Giaconda Tommaso, Bureau No. 55395/501. Notice of liability for fine and letter of protest from the Line were enclosed with my letter of transmittal of March 28th.

H. R. Landis, Second Assistant Commissioner.

JK.

Encl.—7997.

[fol. 307] Names of Aliens: Tommaso, Giocondina, 41f, married, Italy.

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., July 4, 1923

Present: Messrs. Archibald (Chmm.), Fouch, and Collins; Interpreter—Casarico.

LPC. Phys. Def. Ill. Ex. Quota Insp. Daileader.
S I 156 S/S "Conte Verde" June 25, 1923.
Quar. June 24, 1923, 12:45 P. M.
Sent to E. I. Hospital upon arrival; discharged July 4. 1923, 1:00 P. M.
Alien, being duly sworn, testified:

I was born in Casal Cassinese, where I have my mother Bonjione Ascenza. Unable to read (Class 4—5707, Italian); husband, Vincente Fello, 138 Darling Street, Wilkes-Barre, Pa., paid passage; never in the United States before.
Going to husband.
$15; telegraphed 35¢.
Coming to join husband and remain permanently.

(Shows declaration of alien about to depart for the United States. Form 228, before the American Consul at Naples, Italy, June 12, 1923. Visae granted thereon June [fol. 308] 13, 1923, with notation "wife of an American citizen." Attached thereto is an affidavit of alien sworn to before the American Consul at Naples, Italy, June 12, 1923, setting forth her inability to secure an Italian passport, and requesting a visae on said affidavit. Attached thereto is an affidavit of the alleged husband of alien, Vincente Fello, dated April 3, 1923, Wilkes-Barre, Pa.)

Never debarred or deported from the U. S. or Canada.
Medical Certificate.—"This is to certify that the above described person has this day been examined and is found to be feeble-minded. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation. (Sgd.) L. Weldon, Surgeon—L. P. Byington, Assistant Surgeon, U. S. Marine Hospital No. 43, Ellis Island, N. Y. H.

Q. Have you been in the United States before?
A. No.

Q. When were you married?
A. February 15th this year.
Q. Where is your marriage certificate?
A. (Alien presents a lengthy certificate of marriage, dated June 3, 1923, certifying to the marriage of Giocondina Tommaso and Vincente Fello on February 15, 1923.)
Q. How long had your husband been in Italy before you were married?
A. 3 months.
Q. When did he return to the United States?
A. Sailed on the 21st of March.
[fol. 309] Q. Why did you not come with him?
A. He could not bring me then. He had to wait until he got his citizenship papers.
Q. Is your husband an American citizen?
A. He is.

(Alien presents certificate of naturalization No. 511467, issued to Vincente Fello in the Court of Common Pleas, Wilkes-Barre, Pa., November 9, 1914. This certificate describes this man as having a wife and four children living in Wilkes-Barre, Pa., aged from one year to twelve years.)

Q. When did you get this naturalization certificate of your alleged husband?
A. I cannot recollect.
Q. Did he leave it with you when he left Italy for this country, or did he send it to you?
A. He sent it after.

(The certificate referred to has a stamp showing that it was sent by the American Consul at Naples, Italy, when visae was granted alien June 12, 1923.)

Q. Were you ever married before?
A. No.
Q. How long was your husband a widower?
A. 9 years.
Q. Has he children?
A. Four.
Q. Are they all in this country?
A. Yes; all in the United States.
Q. Do you know whether they were born in this country?
A. 3 were born in the United States and one in Italy.

Q. Have you ever seen any of these said children of yours?

A. I saw one. Her mother sent her back to Italy. She was then 4 years.

Q. How long had you known your husband before you married him?

A. I knew him before he came to the United States. [fol. 310] He has been here 20 years. He is my brother-in-law. He married my sister.

Q. What did you do to support yourself before your marriage?

A. I worked in the fields.

Q. Did you work for your own family or for other people?

A. My own land.

Q. Is your father living also?

A. No; my father is dead. My mother is living.

Q. Have you any brothers or sisters in Italy?

A. I have one sister in the United States, and one died here.

Q. What is the name and address of your living sister?

A. Maria Gracia Tommaso. I do not know her address.

Q. How long has your sister been in this country?

A. 13 years; married to Johnnie Ringione.

Q. Have you ever worn glasses?

A. No.

Q. Have you ever been confined in a hospital as a public charge or otherwise?

A. No.

Q. Have you ever been sick for any length of time?

A. No; about 15 years ago I had a sickness that lasted 2 or 3 months. It was an irritation of the throat.

Q. Were you in the hospital?

A. No.

By Inspector Collins: I move the case be deferred for examination by a Board of Surgeons.

By Inspector Fouch: I second the motion.

By Chairman: Unanimous.

——, Secretary.

[fol. 311] Names of Aliens: Greiner 183 98880/194, Tommaso Giaconda, 21f, Italy.

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., July 16, 1923, 5.20 p. m.

Present: Insp. Archibald (Ch.), Ins. Hibler, and Greiner.

Deferred from R A 34, July 4.23. Returned from hospital 4th, SI 15 ss. "Conte Verde" June 28, 1923. Int. Casarico.

Copy. SF.

98880/194 sssssEllis Island, N. Y. H. July 14, 1923.

Memorandum to the S. I. Division

Attached find copy of medical certificate for Giaconda Tommaso ex ss. "Conte Verde" June 25, 1923. Take final action in this case.

(Signed) H. R. Landis, Asst. Commissioner B. S. I. & A.

SO.

Inclus. 41959.

[fol. 312] Alien, recalled, gives the following foreign address: "Narcenza Rincione Casal Casaiese province Caserta, Italy. (Passage, including head tax 1,800 Lire from the port of embarkation to New York.")

Copy. SF.

Medical Certificate, July 13, 1923

Alien Giaconda Tommaso, ss. "Conte Verde", June 25, 1923.

Pursuant to the order of the Chief Medical Officer and at the request of the Assistant Commissioner a Board was this day convened to examine the above named alien.

Dr. J. E. Hammett, 139 West 69th St., New York City, was present as the alien's medical representative.

The board has examined alien and finds that she is feebleminded. The certificate of July 3, 1923, is hereby confirmed.

(Signed) L. O. Weldon, Surgeon, Chairman. J. K. Fuller, P. A. Surg., Member. J. J. Loughron, A. A. Surg., Recorder.

To the Commissioner re 98880/194.

G. N. Corput, Acting Chief Medical Officer.

[fol. 313] By Mr. Hibler: I move to exclude this alien as one who is certified as a feebleminded person.

By Mr. Greiner: Second the motion.

By the Chair: I make it unanimous. Excluded as feebleminded.

To the alien, present:

You have been denied admission as feebleminded, and ordered deported. In your case no appeal lies. You will be returned to the country whence you came, in the same class in which you came, and without expense to yourself.

Excluded.

—— ——, Secretary.

[fol. 314] 55395/501

April 1, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of March 28th, No. 98880/194, relative to proposed fine against the S. S. Conte Verdi, arriving on June 28, 1923, for bringing to the United States the alien Giaconda Tommaso, who was certified as being feebleminded.

No copy of the Board of Special Inquiry record accompanied your letter, so far as can be determined, and there is nothing to indicate that the medical examiners certified that, in their opinion, the condition might have been ascertained prior to embarkation. It is requested that you report in the premises, as it is felt that no action should be taken with respect to the proposed fine until all the necessary information is before the Bureau and Department.

W. W. Sibray, Acting Commissioner General.

JWB.

(Signed) W. W. Sibray, Apr. 1, 1924, Mail and Files.

[fol. 315] U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

File No. 98880/194

March 28, 1924.

Commissioner General of Immigration, Washington, D. C.

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, notice of liability for fine and refund of passage money in the case of Tommaso, Giaconda ex SS. "Conte Verde" June 28, 1923.

Bureau file No.: No number. No appeal in the case.
Deported SS. "Conte Rosso" July 25, 1923.
Letter of protest enclosed.

H. R. Landis, Second Assistant Commissioner. B.

Encl. 49492.
IF.

(Stamps.)

[fol. 316] 98880/194

U. S. Department of Labor, Immigration Service

Office of Commissioner, Port of New York

October 23rd, 1923.

To Lloyd Sabaudo, agents of the vessel "Conte Verde", June 28, 1923, 1 State Street, New York City:

In conformity with the requirements of Rule 28 of the Immigration Regulations, you are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 (or section 35) of the immigration act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the vessel

on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the collector of customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine should it be imposed.

[fol. 317] Name of alien: Tommaso, Giaconda, 21-F, Married-Housewife.

Amount required to be deposited: $200.00. (Also ticket refund of $82.08.)

Defect or disability upon which fine is proposed: Feebleminded.

H. R. Landis, Second Assistant Commissioner.

JVR.

Received the above notice Nov. 14, 1923, at 3.20 P. M.

Per Lloyd Sabaudo.

Witness: Samuel ? ? ? ?

[fol. 318] (Letterhead of Lloyd Sabaudo)

December 19, 1923.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

Your File No. 98880/194

SIR: We are in receipt of your "Notice of Liability for Fine" dated October 23, 1923, and served on us on November 7, 1923, in the case of Gioconda Tommaso who arrived on our SS. Conte Verde June 24, 1923. On November 22, 1923, we deposited with the Collector of Customs the sum of $282.08 as follows:

Fine for Feeblemindedness	$200.00
Refund of Passage	82.08
Total	$282.08

We desire to protest the imposition of any fine in this case, and hereby submit the following facts:

1. That in bringing the above named alien to the United States our Company had no intention to violate the law.

We employ competent medical examiners, who carefully examine each alien before embarkation. This person was permitted to come because in their opinion she was not [fol. 319] feebleminded. They found that while this lady had no education, she was efficient in her domestic duties. This fact and their knowledge of the Italian people and customs induced our medical examiners to conclude that Giocondina Tommaso was not feebleminded.

2. That the above named was the wife of an American citizen who married her after the passage of the Cable Act.

In view of the above stated facts, we request that no fine be assessed in this case, and that the Collector of Customs be instructed to refund to us the amount he holds on deposit.

Respectfully, Lloyd Sabaudo, Agency in New York.
Ochipinti, Passenger Traffic Manager.

DAC: EA.

PLAINTIFF'S EXHIBIT NO. 4

May 3, 1924.

55385/11.
Filed June 6, 1927.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of April 30th, No. 98894/21, relative to proposed fine against the S. S. Conte Verde, arriving on Oct. 16, 1923, for bringing to the United States the alien Francesco Marrara, who was certified as [fol. 320] being afflicted with abnormal systemic condition, indicative of syphilis, a physical defect which may affect ability to earn a living and which might have been detected by means of a competent medical examination at the port of embarkation.

The Line, it is noted, protests against the imposition of a fine, on the ground that it employs competent medical examiners, who permitted the alien to embark, and that the condition is not one which can be detected readily.

In view of the official medical certificate, the fact that the alien was excluded and deported thereunder, and the lack of proof that the disability did not exist at the time of

embarkation, it is felt that the penalty as provided in Section 9 should be imposed.

You are directed, therefore, to take appropriate action whereby the sum of $25, now on deposit on account of said alien, may be covered into the Treasury as an immigration fine. The amount of passage is to be returned to the alien.

W. W. Sibray, Acting Commissioner General.

(Stamp:) (Signed) W. W. Sibray, May 5, 1924, Mail and Files.

Approved.

Robe Carl White, Second Assistant Secretary.

[fol. 321] (Stamp:) (Signed) Robe Carl White, Apr. 5, 1924, Mail and Files.

JWB.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

File No. 98894/21

Apr. 30, 1924.

Commissioner General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, notice of liability for fine and refund of passage money in the case of Francesco Marrara, ex S. S. "Conte Verde", Oct. 16, 1923.

Bureau file No. 55385/11.

Letter of protest enclosed.

Deported S. S. "Conte Rosso" Nov. 7, 1923.

H. R. Landis, Second Assistant Commissioner.

Encl. 13318.

SW.

(Stamps.)

[fol. 322] (Letterhead of Lloyd Sabaudo)

File No. 98894/21

April 11, 1924.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: We are in receipt of your "Notice of Liability for Fine" dated February 14, 1924, and served on us February 15, 1924, and in the case of Francesco Marrara, who arrived on our S. S. Conte Verde October 16, 1923.

On February 21, 1924, we deposited with the Collector of Customs the sum of $102.40 as follows:

For Abnormal Systemic Condition	$25.00
For Passage	77.40
Total	$102.40

We desire to protest the imposition of any fine in this case, and hereby submit the following stated facts:

1. That in bringing the above named alien to the United States our Company had no intention to violate any law. We employ competent and experienced medical examiners, who carefully examine each alien prior to embarkation. [fol. 323] The condition herein certified, however, is not one which can easily be detected.

2. That the passport of the above named alien was duly visaed by the American Consul.

In view of the above stated facts, we request that no fine be imposed, and that the Collector of Customs be instructed to refund to us the amount he holds on deposit in this case.

Respectfully, Lloyd Sabaudo, Agency in New York.
M. Serrati, General Manager.

DAC: EA.

[fol. 324] U. S. Department of Labor, Immigration Service

Office of Commissioner, Port of New York

98894/21

February 14, 1924.

To Lloyd Sabaudo Line, agents of the vessel "Conte Verde", 1 State Street, New York City, October 16, 1923:

In conformity with the requirements of Rule 28 of the Immigration Regulations, you are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 (or section 35) of the immigration act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the collector of customs at this port, prior to her sailing, the sum indicated below as security for the [fol. 325] payment of the said fine should it be imposed. Please submit evidence in duplicate.

Name of alien: Marrara, Francesco, 25-M., married-laborer, Brazil.

Amount required to be deposited: $25.00. (Also ticket refund of $77.40.)

Defect or disability upon which fine is proposed: Abnormal systemic condition.

H. R. Landis, Second Assistant Commissioner.

JVR.

Received above notice Feb. 15, 1924, at 3 M.

Lloyd Sabaudo, per P. Ferrara.

Witness: G. O. Donuoghue.

15—48

[fol. 326] U. S. Department of Labor, Immigration Service

98894/21

Port of New York, November 7, 1923.

Commissioner General of Immigration, Washington, D. C.

SIR: In accordance with Department decision No. 55385/11 of 11/3, 1923, the alien Marrara Francesco and wife were deported via S. S. Conte Rosso sailing November 7, 1923.

Respectfully, Harry R. Landis, Assistant Commissioner.

Remarks: ——.

[fol. 327] Rec'd Bureau of Immigration, Nov. 5, 1923, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor

No. 98894/21

November 3, 1923.

Commissioner General of Immigration, Washington, D. C.:

In re Marrara, Francesco and Morabito, Santa S. C. Conte Verde, October 14, SI 27-28

Supplementing my letter of October 26, I enclose herewith the affidavits of Antoni and John Neri, uncles of the aliens.

H. R. Landis, 2nd Asst. Commissioner.

L: FMP.
Encl. 35117.

Stamps.

[fol. 328] Inclosure 35117 from U. S. Department of Labor, Immigration Service, Port of ——

The Society for Italian Immigrants, Ellis Island, N. Y. H.

In the Matter of Name of Alien: Marrara Francesco; Ship: Conte Verde; Arrived Oct. 16, 1923; Status: ——

Affidavit

STATE OF NEW JERSEY,
County of Bergen, ss:

Antoni Neri, being duly sworn, deposes and states in answer to the following questions:

Name? Antoni Neri. Age? 49. Address? William Street, Englewood, N. J.

Married? Yes. How many children? Seven. Age of children? Ages 4 to 17 years.

Address of children and wife? William Street, Englewood, New Jersey.

Citizenship Status:

How long have you been in U. S.? 30 years. Citizen? No. Certificate No.? ——.

When were you naturalized? ——. Where? ——.

Did you serve in the U. S. Army or Navy? ——. When inducted? ——.

[fol. 329] When discharged? ——. Where did you serve? ——.

If native born, where were you born? Italy. When? ——.

If not a citizen, have you your first papers? ——. When? ——.

Where? ——. Certificate No.? ——.

Employment:

Employed by whom? Dwight School. Address? Englewood, N. J.

What work do you do? Janitor. How much do you earn weekly? $35.00.

If in business, what kind? ——. Address? ——.

Average net income monthly? ——. How much income tax paid last year? ——.

Financial Standing:

Do you own property? Yes. Where situated? Englewood, N. J.

What is its value? $10,000. What debts are outstanding on it? None.

What is your equity in the property? 10,000.

Value of bonds you own? ——. Have you a bank account? Yes.

How much have you deposited? 5,000.

State name of Bank? Palisade Trust Co. Address? Englewood, N. J.

Amount of cash you have on hand? 200.

What other financial holdings have you? ——. State particulars? ——.

[fol. 330] Re Alien:

Name of alien, age and nationality? Marrara Francisco.

When arrived? October 16, 1923. On what ship? Conte Verde. From? Italy.

What relation are you to alien? Uncle.

What will you do for the alien? Will help in any way necessary.

State in full: ——.

Will you send children to day school until 16 years old? ——.

Can you furnish bonds of $500 or more for each alien, if required? Yes.

Antoni (his X mark) Neri. (L. S.)

J. Marshall Gorham, Witness.

Subscribed and sworn to before me this 27th day of October, 1923. J. Marshall Gorham, Notary Public, New Jersey.

[fol. 331] The Society for Italian Immigrants, Ellis Island, N. Y. H.

In the Matter of Name of Alien: Marrara Francisco; Ship: Conte Verde; Arrived Oct. 16, 1923; Status: ——

Affidavit

State of New Jersey,
County of Bergen, ss:

John Neri, being duly sworn, deposes and states in answer to the following questions:

Name? John Neri. Age? 56. Address? 2 E. Palisade Ave., Englewood, N. J.

Married or single? Yes. How many children? None. Age of children? ——.

Address of children and wife? Same address.

Citizenship Status:

How long have you been in U. S.? 25 years. Citizen? No. Certificate No.? ——.

When were you naturalized? ——. Where? ——.

Did you serve in the U. S. Army or Navy? ——. When inducted? ——.

When discharged? ——. Where did you serve? ——.

If native born, where were you born? Italy. When? June 24, 1867.

If not a citizen, have you your first papers? No. When? ——.

Where? ——. Certificate No.? ——.

[fol. 332] Employment:

Employed by whom? David McGill. Address? Englewood, N. J.

What work do you do? Laborer. How much do you earn weekly? 38.50.

If in business, what kind? ——. Address? ——.

Average net income monthly? ——. How much income tax paid last year? None.

Financial Standing:

Do you own property? No. Where situated? ——.

What is its value? ——. What debts are outstanding on it? None.

What is your equity in the property? ——.

Value of bonds you own? ——. Have you a bank account? Yes.

How much have you deposited? 4,000.

State name of Bank? Citizens National Bank. Address? Englewood, N. J.

Amount of cash you have on hand? Palisade Trust Co., Englewood, N. J.

What other financial holdings have you? Cash on hand $200.

State particulars? ——.

Re Alien:

Name of alien, age and nationality? Marrara Francisco. 24 years.

When arrived? Oct. 16, 1923. On what ship? Conte Verde. From Italy.

What relation are you to alien? Uncle.

[fol. 333] What will you do for the alien? Will help in any way necessary.

State in full: ——.

Will you send children to day school until 16 years old? ——.

Can you furnish bonds of $500 or more for each alien, if required? Yes.

John (his X mark) Neri. (L. S.)

J. Marshall Gorham, Witness.

Subscribed and sworn to before me this 27th day of October, 1923. J. Marshall Gorham, Notary Public, New Jersey. (Seal.)

No. 55385/11

Nov. 3, 1923.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau acknowledges the receipt of your letter No. 98894/21, of Oct. 26th in the case of Francesco Marrara and wife (S. S. Conte Verde, SI-27-28).

After carefully considering the evidence presented in the [fol. 334] record, the 2nd Assistant Secretary has affirmed the excluding decision of the Board of Special Inquiry.

W. W. Sibray, for the Commissioner General, Assistant Immigration Inspector.

(Stamp:) (Signed) W. W. Sibray, Nov. 3, 1923, Mail and Files.

c.

55385/11—Ellis Island

In re Francesco Marrara, Aged 25 and Wife, 27

November 3, 1923.

The case comes before the Board of Review on appeal. No hearing.

This record relates to a couple, the man a native of Brazil and the wife of Italy, who arrived at the Port of New York on October 14; man has father in Italy; never here before; destined to wife's uncle in New Jersey; have $50 and 100 lire; to remain permanently.

The aliens were excluded as lpc and the man as physically defective.

The man is certified to be afflicted with abnormal systemic condition characterized by a positive Wasserman reaction [fol. 335] in the blood serum, which condition may affect ability to earn a living. It will, therefore, be seen that this man is afflicted with a disease which should by all means prevent his admission to the United States. The wife, of course, being dependent upon him should be excluded.

It is recommended that the excluding decision be affirmed.

W. H. Dunslser, Chairman, Comr. & Secy., Gen'ls Board of Review.

ES/CAL.

So ordered.

Robe Carl White, Second Assistant Secretary.

[fol. 336] (Stamp:) Recd. Bu. of Immigration, Oct. 27, 1923, Mail and Files.

Form 662

Transmission of Records on Appeal

U. S. Department of Labor, Immigration Service

98894/21

Ellis Island, N. Y. H., Oct. 26, 1923.

Name of Alien-: Marrara, Francesco, 25; Morabito, Santa, 27; ex S. S. Conte Verde, October 14, SI 27-28.

Cause of exclusion: Francesco: Phys. Def.; Both: LPC.
Next sailing of line involved: November 7.
Whether decision to be wired or mailed: Wire.

H. R. Landis, 2nd Asst. Commissioner.

EMP.
Encl. 42788.

[fol. 337] U. S. Department of Labor, Immigration Service

LB-153

Names of Aliens: Marrara, Francesco, 25m; wf Morabito, Santa, 27f; #1 Brazil-So. Ital.; #2 Italy-So. Ital.

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., this 24th day of October, 1923

Present: Insps. Couch (Chmn.), Sherman, and Benson; Int. Andreaccio.
LPC P. D.—Insp. Dailiader & Johnson.
SI 27 and 28—S. S. Conte Verde, Oct. 16, 1923.
Quar. 3:20 a. m. Oct. 14, 1923—Embarked at Naples Oct. 4, 1923.
Aliens, being duly sworn, testified:

I was born in San Carlo, Brazil, and since the age of four, resided at Reggiol Calabria, Italy, where I have father, Demetrio, in good health; wife was born in Gallina, Italy.
Both read; I paid passage for both; laborer; housewife; never in U. S.; going to wife's uncle, Pietro Sirelo, 88 Wil-
[fol. 338] liams St., Englewood, N. J.; have $50 and 100 lire; coming to seek work and remain permanently.
Med. Cert. for husband #10526.—This is to certify that the above described person has this day been examined and is found to be afflicted with an abnormal systemic condition characterized by a positive Wasserman reaction in the blood serum, which condition "may affect ability to earn a living". (This reaction is indicative of syphilitic infection.) In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation.

(Sgd.) A. Kymmel, C. W. Chapin.

(Show two Italian passports issued at Reggio Calabria, Sept. 27, 1923, and visaed by the American Consulate at Messina, Oct. 1, 1923, with notation on husband's "Brazil" and on wife's "Italy"; number of passports for husband 10697 and for wife 10695.)

Never debarred or deported from the U. S. or Canada.

Q. How long have you had syphilitic infection?
A. I am not afflicted with that.
Q. Have you any relatives of your own in the U. S.?
A. No.
Q. Have you had any children?
A. Yes, one baby but it died.

Witness sworn:

Q. What is your name and address?
A. Peter Sirelo, 88 Williams St., Englewood, N. J.
[fol. 339] Q. For whom do you call?
A. My sister's daughter and her husband (names them).
Q. Are you a citizen of the U. S.?
A. Yes, for seven years; got papers in Court of Common Pleas, Hackensack, N. J.
Q. What is your occupation?
A. Own butcher shop worth $7,000; also two houses worth $15,000; have $2,000 in the Citizens Nat. Bank and $3,000 in the Palisades Trust Co. (Shows books).
Q. Are you married?
A. Yes, have wife and five children.
Q. What will you do for the aliens if admitted?
A. Give them a home and got the husband a job.

Mr. Sherman: I move exclusion of the male alien as a person certified with physical defect which may affect ability to earn a living and both persons likely to become a public charge.

Mr. Benson: Second the motion.

Chairman: Unanimous.

To alien:

Q. What did you pay for your passage?
A. 1800 lire including head tax.
Q. What is your foreign address?
A. To me at Sbarra Superiola, Reggio Calabria, Italy.

Q. You have both been excluded for (names reasons). However, the decision of this Board is not final and you have the right to appeal to the Sec. of Labor at Wash., whose decision is final. If deported it will be deported at the expense of the steamship company and the Secretary may order refund of your passage money which will be [fol. 340] sent you at the address given. Do you wish to appeal?

A. Yes.

Louis Benson, Secretary.

Alien's Appeal from Decision of Board of Special Inquiry

U. S. Department of Labor, Immigration Service

Date: Oct. 24, 1923.

To the Honorable Secretary of Labor (through official channels):

I desire to appeal from the decision of the Board of Special Inquiry.

Marrara Francesco.

Witness to signature (if alien signs by mark): —— ——.

Ship: Conte Verde.
Date of Arrival: Oct. 16.
S. I. No. 27 & 28.
Cause of exclusion: Phys. def. & L. P. C.
Minute references: L. B. 153.
Appeal filed October 24, 1923. G. R.

[fol. 341] PLAINTIFF'S EXHIBIT No. 5

55375/971

May 3, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of April 30th, No. 98886/754, relative to proposed fine against the S. S. Conte Rosso arriving on August 24, 1923, for bringing to the United States the alien Eugenio Sbragia, who was certified

as being afflicted with valvular disease, chronic cardiac, a physical defect which may affect ability to earn a living and which might have been detected by means of a competent medical examination at the port of embarkation.

The Line, it is noted, protests against the imposition of a fine, on the ground that it employs competent medical examiners, who failed to detect this disability which, therefore, must be assumed to have been non-existent at that time. In view of the official medical examination, the fact that the alien was excluded and deported thereunder, and the lack of proof that the defect did not exist prior to embarkation, it is felt that the penalty as provided in Section 9 should be imposed.

You are directed to take appropriate action whereby the sum of $25, now on deposit on account of said alien, may be covered into the Treasury as an immigration fine. The amount of passage is to be returned to the alien.

W. W. Sibray, Acting Commissioner General.

[fol. 342] (Stamp:) (Signed) W. W. Sibray, May 6, 1924, Mail and Files.

Approved.

Robe Carl White, Second Assistant Secretary.

(Stamp:) (Signed) Robe Carl White, Apr. 6, 1924, Mail and Files.

JWB.

Recd. Bu. of Immigration May 1, 1924, Mail & Files.

U. S. Department of Labor, Immigration Service

Office of Commission of Immigration Ellis Island, New York Harbor, N. Y.

File No. 98886/754

a.

Apr. 30, 1924.

Commissioner General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, [fol. 343] notice of liability for fine and refund of passage

money in the case of Eugenio Sbragia, ex S. S. "Conte Rosso", Aug. 24, 1923.

Bureau file No. 55375/971.

Letter of Protest enclosed.

Deported S. S. "Conte Verde" Sept. 15, 1923.

H. R. Landis, Second Assistant Commissioner.

Encl. 13317.

SW.

(Letterhead of Lloyd Sabaudo)

File No. 98886/754

April 11, 1924.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: We are in receipt of your "Notice of Liability for Fine" dated February 14, 1924, and served on us February 15, 1924, in the case of Eugenio Sbragia, who arrived on our S.S. Conte Rosso August 24, 1923.

On February 21, 1924, we deposited with the Collector of Customs the sum of $106.80 as follows:

For Valvular Heart Disease	25.00
For passage	81.80
Total	$106.80

[fol. 344] We desire to protest the imposition of any fine in this case, and hereby submit the following stated facts:

1. That in bringing the above named alien to the United States our Company did not wilfully violate the law. We employ competent medical examiners, who carefully examine each alien prior to embarkation. This alien was permitted to come because the condition herein certified did not exist prior to embarkation, or was of such a nature that, in the opinion of our medical examiners, it could not affect his ability to earn his living.

2. That the passport of this alien was visaed by the American Consul.

From the above stated facts it must be clear that our Company did not wilfully violate the law, and we request,

therefore, that no fine be assessed, and that the Collector of Customs be instructed to refund to us the amount he holds on deposit in this case.

Respectfully, Lloyd Sabaudo, Agency in New York,
M. Serrati, General Manager.

DAC:EA.

[fol. 345] U. S. Department of Labor, Immigration Service

Office of Commissioner, Port of New York

98886/754

February 14, 1924.

To Lloyd Sabaudo Line, agents of the vessel "Conte Rosso" August 24, 1923, 1 State Street, New York City:

In conformity with the requirements of Rule 28 of the Immigration Regulations, you are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the *the* alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 (or section 35) of the immigration act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the collector of customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine should it be imposed. Please submit evidence in duplicate.

[fol. 346] Name of Alien: Sbragia, Eugenio, 22-M, married-laborer, Italy.

Amount required to be deposited: $25.00. (Also ticket refund of $81.80.)

Defect or disability upon which fine is proposed: Valvular Disease.

H. R. Landis, Second Assistant Commissioner.

JVR.

Received the above notice February 15, 1924, at 3 M.

Lloyd Sabaudo per P. Ferrara.

Witness: G. O. Donuoghue.

[fol. 347] Recd. Bu. of Immigration, Sept. 21, 1923, Mail and Files.

U. S. Department of Labor, Immigration Service

Port of New York

98886/754

September 15, 1923.

Commissioner General of Immigration, Washington, D. C.

SIR: In accordance with Department decision No. 55375/971 of 9/11, 1923, the alien Eugenio Seragia was deported via S. S. Conte Verde sailing September 15, 1923.

Respectfully, Harry R. Landis, Assistant Commissioner.

Remarks: ——.

[fol. 348] U. S. Department of Labor, Bureau of Immigration, Washington

No. 55375/971

September 11, 1923.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau acknowledges the receipt of your letter No. 98886/754 of Sept. 7th in the case of Eugenio Seragia (S. S. Conte Rosso, SI-3).

After carefully considering the evidence presented in the record, the 2nd Assistant Secretary has affirmed the excluding decision of the Board of Special Inquiry.

For the Commissioner General.

G. S. Y., Immigrant Inspector.

c.

(Signed) Sep. 11, 1923, Mails and Files.

[fol. 349] Recd. Bu. of Immigration Sep. 8, 1923, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor

No. 98886/754

September 7, 1923.

Commissioner General of Immigration, Washington, D. C.:

In re Seragia, Eugenio; 22m; married; wife and child abroad

Native of Italy; reads: laborer; never in U. S.; going to a cousin in Hellsburg, Cal.; to remain permanently; ex S. S. "Conte Rosso" August 24, 1923; SI-3.

Excluded—Phys. Def.; LPC.

Med. Cert.: Valvular disease; chronic cardiac.

No attorney. Affidavits attached.

This alien claims his cousin has been here twenty years and is a property owner; also has a brother who has been in U. S. for about ten months; affidavits are attached hereto; his cousin testifies that he is a rancher; owns property valued at $2500 and makes $150 a month; declarant; has one half interest in and to 27 acres of land [fol. 350] in Sonoma County, Cal., and is worth, altogether $10,000. Makes usual guarantees of support. The alien is fitted only for manual labor, and his physical condition precludes the possibility of his enduring any hard or strenuous work. I recommend his deportation.

Expedite decision. Next sailing Sept. 15.

Affirm excluding decision.

H. R. Landis, Assistant Commissioner, in Charge B. S. I. & Appeals.

SO-Incl. 37809.

September 8, 1923.

Considered and recommended that the excluding decision be affirmed.

W. H. Dunslser, Chairman, Secy. & Comr. Gen'l. Board of Review.

ES/MLC.

So Ordered.

Robe Carl White, Second Assistant Secretary.

[fol. 351] SLJ114

Names of Aliens: Sbragia, Eugenio, 22m M., Italy.

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., August 28, 1923 1:00

Present: Insps. O'Connor (Chmn.), LaPointe & Jackson; Intr. Andreaccio.

LPC. PD. Insp. Bishara.

S I 3, SS. Conte Rosso (LS) 8/24/23. Embarked at Genoa, 8/12/23.

Alien, sworn by inspector O'Connor, testified:

Born in Massa Macinia, Province of Lucca, Italy, where I have my wife, Iolanda, and child 5 months old in good health.

Read.

Father paid my passage.

Laborer; never in the U. S.

Going to Cousin, Frediano Scatena, Box 328, Healdsburg, Calif.

$25; ticket to destination (Telegraphed for affidavit D and paid $1.30).

Coming to look for work and remain permanently.

(Cert. #4456, 8/24/23. This is to certify that the above described person has this day been examined and is found [fol. 352] to be afflicted with Valvular Disease, Chronic Cardiac, which may affect ability to earn a living. In our opinion, the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation.

Surgeons: M. P. H. ? S. M. Paley.

(Shows Italian passport issued at Lucca, June 28, 1923, seen by American Consul at Leghorn, June 30, 1923. Notation Italy.)

Never debarred or deported from the U. S. or Canada.

Q. Have you any closer relatives in this country than your cousin?

A. I have a brother, Libero, 1318 N. Wells Street, Chicago, Ill.

Q. How long has your cousin been in this country?

A. About 20 years, and brother is here about 10 months.

Q. Why do you not go to your brother?

A. Because my cousin is a property owner.

Q. What do you expect to do here to maintain yourself if admitted?

A. Any kind of work.

Q. Do you expect to have to maintain yourself as a laborrer?

A. Yes.

Q. You are certified by the Medical Examiners as being afflicted with Valvular Disease Chronic Cardiac; are you aware of that?

A. No, I was always working. I was never sick.

Q. What did you pay for your passage?

A. 1800 Lire, plus head tax.

Q. What is your address?

A. Eugenio Sbragia, Di Domenico, Massa, Macinaia, Lucca, Italy.

Mr. LaPointe: I move to exclude the alien as one certified with a physical defect which may affect ability to earn a [fol. 353] living, and as a person likely to become a public charge.

Mr. Jackson: I second the motion.

Chairman: I make it unanimous.

To the alien:

Q. You have been denied admission by this board, for these reasons (naming them). You have the right to appeal to the Hon. Secretary of Labor for a review of the evidence taken here and to decide whether you shall be admitted or debarred. If deported it will be at the expense of the SS. company, in the same class in which you arrived, and the Secretary of Labor may order the refund of the amount paid for your passage. Do you wish to appeal?

A. Yes.

(Alien submits affidavit, without number, sworn to by his cousin, Frediano Scatena, November 28, 1922, stating that affiant is a rancher earning $150 a month, owns ranch worth $2,500; guarantees to provide for the alien.)

S. L. Jackson, Secretary.

Excluded.

Affidavit

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Frediano Scatena, being duly sworn, deposes and says:

I am a resident of the United States and reside in Healdsburg, California (Box 328).

I am 29 years of age and married.

I am registered for the draft in Brentwood, Calif. I have obtained the first papers declaring my intentions to become [fol. 354] a citizen of the United States, and have made application for the final papers.

I am a rancher by occupation and earn $150.00 per month. I own an interest in a ranch, which interest is worth $2,500.00.

I am and always have been a law abiding inhabitant, and have not at any time been charged with or arrested for any crime or misdemeanor. That I do not belong to nor am I in any wise connected with any group or organization whose principles are contrary to organized government. It is my earnest intention to remain in the United States.

My cousin Eugenio Sbragia aged 22 years, now in Italy, is coming to the United States to make his home with me and my family in Healdsburg, California.

If my cousin will be admitted into the United States, I promise and guarantee to provide for him, support him, and look after him in order that he shall never become a public charge.

Frediano Scatena.

Subscribed and sworn to before me this 28th day of November, 1922. S. P. Bugazy, Notary Public in and for the City and County of San Francisco, State of California. (My Commission expires April 18th, 1926.) (Seal.)

[fol. 355] I, the undersigned hereby certify and declare that I am personally acquainted with the affiant and know that the facts contained in the above affidavit are true and correct.

Forance Scatena.

STATE OF CALIFORNIA,
County of Sonoma, ss:

Frediano Scatena, of Sonoma County, California, being first duly sworn, deposes and says:

Eugenio Sbragia who arrived at Ellis Island, New York, on the Steamer Conti Rosso on or about the 24th day of August, 1923, and who is now detained at Ellis Island, is my cousin.

If he is permitted to land I will pay for any medical attention that he may need and will also take care of him if he is unable to support himself.

I am the owner of an undivided one-half interest in and to twenty-seven acres of the finest grade land in this section and am worth more than Ten Thousand ($10,000.00) Dollars net.

I am a farmer by occupation and will give my said cousin steady employment.

Frediano Scatena.

Subscribed and sworn to before me this 25th day of August, 1923. Fred W. M. McConnell, Notary Public in and for the County of Sonoma, State of California. Conte Rosso.

[fol. 356] (Stamp:) File No. 2043/646. Chicago, Aug. 28, 1923. Forwarded to Port of Arrival.

STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

Howard D. Ebey, Inspector in charge:

I hereby petition that Name—Eugenio Sbragia, Age—23, Relationship—my brother, Name of Steamship—Conte Rosso at New York on Aug. 24, 1923, be permitted to enter the United States. I promise to hold harmless the United States and each State, Territory, County and Municipality against these persons ever becoming a public charge and agree to send any who are under 16 to school until at least 16 years of age.

I, Libero Sbragia, being duly sworn, depose and state that I was born on the 15th day of February, 1903, in the town of Massamascinaia, Country of Italy, I emigrated to the United States in October 1922.

I further state that I am a resident of Chicago and live at 1318 North Wells Street, in a 4 room flat with my aunt, Mrs. Scatena & her sons; she is a widow.

I further state that I am not a citizen of the United States. I have secured in the — court of — on ——.

[fol. 357] I further state that my present occupation is Statue-maker. I am employed by Martinelli & Scatena, Address, 1435 N. Clark Street.

I further state that my average weekly earnings are $30.00; I have $— in bank; personal property valued at $—, as follows: Cash 200.00; Real Estate located ——; Market value, $——; mortgages, $——. The title in the name of ——. My approximate net savings since arrival in the United States are $200.00.

I further state that my aunt, Mrs. Scatena will help me to furnish bond and to pay for any medical or surgical care needed. My cousins, Roy and Renato Scatena, work & earn good salaries. A good friend, Gabriele Baccetti, 306 W. Illinois St., citizen, having an income of $150 a month & worth $15,000.00 is also willing to help me furnish bond.

Signature: Libero Sbragia.

Subscribed and sworn to before me this 28th day of August, in the year 1923. E. J. Noble, Immigrant Inspector.

[fol. 358] (Stamp:) File No. 2043/6462. Chicago, ——, ——. Forwarded to Port of Arrival.

State of Illinois,
County of Cook,
City of Chicago, ss:

Howard D. Ebey, Inspector in charge:

I hereby petition that Name—Eugenio Sbragia, Age—23, Relationship—My mother's cousin, Name of Steamship—Conte Rosso, at New York, on Aug. 24, 1923, be permitted to enter the United States. I promise to hold harmless the United States and each State, Territory, County and Municipality against these persons ever becoming a public charge and agree to send any who are under 16 to school until at least 16 years of age.

I, Renato Scatena, being duly sworn, depose and state that I was born on the 3rd day of February, 1902, in the town of Chicago, Illinois, Country of U. S. of America.

I further state that I am a resident of Chicago and live at 1318 North Wells Street in a 4 room flat with my mother,

my brother Roy & my cousin Libero Sbragia, Eugenio's brother.

I further state that I am a citizen of the United States by birth.

I further state that my present occupation is Clerk. I am employed by The Central Commercial Company, Key-[fol. 359] stone Oil & Mfg. Division, Address, 111 North Market Street.

I further state that my average yearly earnings are $2,200.00; I have $2,561.00 in bank; personal property valued at $600.00, as follows: Bonds, $600.00; Real Estate located ——; Market values, $——; mortgages, $——. The title in the name of ——. My approximate net savings since arrival in the United States are $3,161.00.

I further state that I am able and willing to furnish bond for Eugenio and to help his brother, Libero, pay for any medical or surgical care necessary. My brother, Roy, manufactures Plaster of Paris Novelties, his share of the business & his personal property amounts to about $2000.00.

Signature: Renato J. Scatena.

Subscribed and sworn to before me this 29th day of Aug., in the year 1923. P. H. Shetton, U. S. Immigrant Inspector.

PLAINTIFF'S EXHIBIT No. 6

55395/345

April 3, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of March 17th, No. 98886/103, relative to proposed fine against the S. S. Conte Verdi, arriving on August 1, 1923, for bringing to the [fol. 360] United States the alien Ferdinando Lofredo, who was certified as being afflicted with trachoma, a dangerous, contagious disease, which might have been detected by means of a competent medical examination at the port of embarkation.

The Line, it is noted, protests against the imposition of a fine, on the ground that the alien was examined prior to embarkation and was accepted for passage because the

disease was not then existent. In view of the official medical certificate, however, the Bureau finds itself unable to accord favorable consideration to this protest.

It is ruled that the penalty as provided in Section 9 should be imposed and you are directed to take appropriate action whereby the sum of $200, now on deposit on account of said alien, may be covered into the Treasury as an immigration fine. The amount of passage is to be returned to the alien, who was deported, presumably. Please report definitely in future with regard to disposition made of the case.

W. W. Sibray, Acting Commissioner General.

(Signed) W. W. Sibray, Apr. 4, 1924, Mail and Files.

Approved.

Robe Carl White, Second Assistant Secretary.

(Signed) Robe Carl White, Apr. 4, 1924, Mail and Files.

JWB.

[fol. 361] Recd. Bu. of Immigration, Mar. 22, 1924, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

98886/103

March 21, 1924.

Commissioner-General of Immigration, Washington, D. C.:

As requested in Bureau letter of March 19th, No. 55395/345, I enclose herewith copy of minutes in the case of Ferdinando Lofredo, which I inadvertently omitted to enclose in my letter of March 17th.

H. R. Landis, Second Assistant Commissioner.

RA.

Inclosure 15102.

[fol. 362] NC 109

Names of Aliens: Lofredo, Ferdinando, M., 17, sing., Italy, Italian.

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y.

August 13/23.

Present: Messrs. Travis, (Chmn.), Matthews, & J. A. Luttrell; Int. Radwaner.

DCD, Insp: Dailiader.

SI 17, SS Conte Verde, LL. Sabaudo Line. August 1/23 : 10:50 AM.

Quar: 1:22 Am. Aug. 1. In Hosp.

Alien, sworn, testified:

Embarked from Naples, July 23d/23.

Born: Guglionessi, Prov. of Campobasso, Italy, where have Mother Angelina, in good health.

Read.

Father in U. S. Enrico paid passage: His address: 26 Lines St. Rahway, N. J.

Blacksmith's helper. Never in U. S. before. Going to father.

$25 check deposited with hospital author.

Did not telegraph.

Coming to join father; seek employment; remain permanently.

[fol. 363] Italian passport: Larino, Italy June 29/23; Visaed Am. Cl. Naples 7/21. Notation: Place of Birth: Naples.

Never debarred or deported from U. S. or Canada.

Medical Certif 2987 Trachoma. This is to certify that the above-described person has this day been examined and is found to be afflicted with Trachoma, a dangerous contagious disease. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation. Drs. Porter & Schmer.

Q. How long is father in U. S.?

A. 16 years. He is a U. S. citizen.

Q. With whom does he live: All alone.

Q. Have you brothers or sisters?

A. 1 sister in Italy with mother; 10 yrs old.

Q. Has your father been back in Italy since he came to this country? Yes. He returned once.

Q. How long have you been troubled with your eyes?

A. Don't know; at Naples was examined by the doctor, before boarding ship; he said I was all right.

Q. The doctors here certify that you are suffering with Trachoma, a dangerous contagious disease, which makes you ineligible to land; have you any further statement to make why you should not be deported?

A. I wish to remain here to be treated at the Hospital at Ellis Island, for which treatment my father will deposit a sum of money with the hospital authorities.

[fol. 364] Passage Cost: 1987 Italian Lire, including Head Tax.

Foreign Address: c/o Piaza-Duomo, Termoli, Province of Campo Bosso, Italy.

Mr. Matthews: I move to exclude alien as suffering from Trachoma, a dangerous contagious disease.

J. A. Luttrell: I second it.

Chairman: Unanimous.

To the Alien:

Q. You have been denied admission to the U. S. for the reason (as stated). You have no right of appeal. Should the Hon. Secretary of Labor decide that you are entitled to a refund of your passage money, it will be sent to you at the address given.

You will be deported at the expense of the steamship company which brought you here. *Q.* Do you understand your rights?

A. Yes.

Alien excluded and ordered deported.

Harry Chrysdall, Secretary.

[fol. 365] 55395/345

March 19, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of March 17th, No. 98886/103, relative to proposed fine in the case of Ferdinando Lofredo.

No action can be taken until the Bureau is furnished with a copy of the record of the Board of Special Inquiry, or a

statement that, in the opinion of the examining medical officer, the existence of the disease might have been detected prior to embarkation, neither having been received with your letter.

W. W. Sibray, Acting Commissioner General.

JWB.

(Signed) W. W. Sibray, Mar. 19, 1924, Mail and Files.

[fol. 366] Recd. Bu. of Immigration Mar. 18, 1924, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

File No. 98886/103

March 17, 1924.

Commissioner General of Immigration, Washington, D. C.:

As directed in Bureau letter #55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, notice of liability for fine and refund of passage money in the case of Ferdinando Lofredo ex SS "Conte Verde", August 1, 1923.

Bureau file #—. This case never before Bureau. Copy of minutes and letter of protest enclosed.

H. R. Landis, Second Assistant Commissioner. B.

RA.
Encl.—35641.

[fol. 367] (Letterhead of Lloyd Sabaudo)

File No. 98886/103

March 8, 1924.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: With reference to "Notice of Liability for Fine" dated January 11th, 1924, and served on us January 14th,

1924, in the case of Ferdinado Lofredo, who arrived on our SS. Conte Verde August 1, 1923, and was certified for trachoma, we beg to protest the imposition of any fine in this case and desire to submit the following facts.

1. That our Company employs competent medical examiners, who carefully examine every alien prior to embarkation. This alien was permitted to come because the cause herein certified did not exist prior to embarkation, and must have developed during the voyage.

2. That the passport of the above named alien was visaed by the American Consul.

In view of the above enumerated facts, we request that no fine be assessed, and that the Collector of Customs be in-
[fol. 368] structed to refund to us the amount he holds on deposit.

Respectfully, Lloyd Sabaudo, Agency in New York.
M. Serrati, General Manager.

DAC:EA.

Notice of Liability for Fine on Account of Bringing Diseased or Mentally Afflicted Aliens to the United States

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

98886/103

January 11, 1924.

Lloyd Sabaudo Line, agents of the Vessel "Conte Verde", 3 State Street, New York City, August 1, 1923:

In conformity with the requirements of Rule 28 of the Immigration Regulations, you are hereby notified that the certificate of the examining surgeon, based upon a physical
[fol. 369] and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provision of Section 9 (or Section 35) of the Immigration Act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when seh is ready to sail and allowed to proceed upon her outward bound voyage upon condition that you deposit with the collector of customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine, should it be imposed. Please submit all evidence in duplicate.

Name of alien: Lofredo, Ferdinando, 17, m., single, blacksmith (Italian).

Amount required to be deposited: $200. (Also ticket refund of $83.51).

Defect or disability upon which fine is proposed: Trachoma.

H. R. Landis, Second Assistant Commissioner. B. co.

Received above notice Jan. 14, 1924, at — M.

Lloyd Sabaudo, per P. Ferrara.

Witness: G. O'Donuoghue.

[fol. 370] PLAINTIFF'S EXHIBIT No. 7

(Stamp.)

55405/36

May 13, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of April 29th, No. 98884/972, relative to proposed fine against the S. S. Conte Verde, arriving on August 8, 1923, for bringing to the United States the alien Angelo Capaldo, who was certified as being afflicted with trachoma, a dangerous, contagious disease, which might have been detected by means of a competent medical examination at the port of embarkation.

The Line, it is noted, protests against the imposition of a fine, on the ground that the alien was examined prior to

embarkation and the disease was not detected because it did not exist at that time.

In view of the Official medical certificate, however, it is believed that the disease did exist prior to embarkation and that it could have been detected. It is ruled, therefore, that the penalty as provided in Section 9 should be imposed and you are directed to take appropriate action whereby the sum of $200, now on deposit on account of said alien, may be covered into the Treasury as an immigration fine. The amount of passage is to be returned to the alien, who was deported.

W. W. Sibray, Acting Commissioner General.

(Signed) W. W. Sibray, May 14, 1924, Mail and Files.

[fol. 371] Approved.

Robe Carl White, Second Assistant Secretary.

JWB.

(Stamp:) (Signed) Robe Carl White, May 14, 1924, Mail and files.

Recd. Bu. of Immigration May 1, 1924, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

File No. 98884/972

(Stamp.) April 29, 1924.

Commissioner General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, [fol. 372] notice of liability for fine and refund of passage money in the case of Angelo Capaldo, ex SS. "Conte Verde", Aug. 8, 1923.

Bureau file No.: No bureau file number.

Copy of minutes enclosed.

Letter of protest enclosed.

Deported Aug. 18, 1924, S. S. "Guilio Cesare".

H. R. Landis, Second Assistant Commissioner.

Encl. 13314.

SW.

(Letterhead of Lloyd Sabaudo)

File No. 98884/972

April 11, 1924.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: We are in receipt of your "Notice of Liability for Fine" dated February 15, 1924, and served on us February 18, 1924 in the case of Angelo Capaldo, who arrived on our SS. Conte Verde August 8, 1923.

On February 21, 1924, we deposited with the Collector [fol. 373] of Customs the sum of $287.63 as follows:

For Trachoma	$200.00
For Passage	87.63
Total	$287.63

We desire to protest the imposition of any fine in this case, and hereby submit the following stated facts:

1. That in bringing this alien on board our steamer our Company had no intention to violate any law. We employ competent and experienced medical examiners, who carefully examine each alien prior to embarkation. The condition herein certified was not detected, because the disease had not developed and did not exist prior to embarkation.

2. That the above named alien was not destined to the United States but to Canada. The Department has ruled on many similar cases where the aliens were coming in transit to Canada, that the transportation companies are not liable to a fine.

3. That the above named alien was furnished with transit certificate by the American Consul in Italy.

In view of the facts stated above, and especially because this alien was not destined to the United States, we request that no fine be assessed, and that the Collector of Customs [fol. 374] be instructed to refund to us the amount he holds on deposit in this case.

Respectfully, Lloyd Sabaudo, Agency in New York.
M. Serrati, General Manager.

DAC:EA.

U. S. Department of Labor, Immigration Service

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y.

HC 101

Names of Aliens: Capaldo, Angelo, 24M, sing., Italian, So. Italy.

August 13 : 1923.

Present: Messrs. Travis (Chmn.), Matthews & J. A. Luttreel; Interp. Radwaner; DCD Insp. Smith.

SI 13 SS Conte Verdi, Lloyd Sab. Line. 8/8/23.

Alien sworn, testified:

Name and age as given; single; traveling alone from Naples sailed 7/3/23.

[fol. 375] Born: Gorrano Valdi, Prov. of Aquila, Italy, where have father Antonio and mother Rosalia—both good health.

Read; father paid passage; f-rm hand.

Going to Friend John W. Newton, Smithville, Ontario, Canada (R. R. #1).

3,000 Lire and check for $25 placed with hosp. author. and ticket to dest.

Did not telegraph.—Coming seek employment as farm hand and remain permanently in Canada.

Italian passport issued: Aquila, Italy, 7/7/23: Transit Cert. Am. Cl. Rome 7/9th. Born: Italy.

Never debarred or deported—U. S. or Canada.

Medical Cert. 2991 Trachoma—Dr. Porter; Dr. Makepeace, certified for Trachoma a dangerous contagious disease which in their opinion might have been detected by competent med. exam. at the foreign port of embark.

Q. Have you relatives in U. S.?

A. Brother Paul Capaldi, Box 81, Steubenville, Ohio, who has been here 3 years.

Q. Do you intend to proceed to Canada and then go to your brother?

A. No.

Q. The doctors certify that you are suffering from trachoma, a dangerous contagious disease, and you will not be

permitted to land; have you any further statement to make?
A. I wish to be admitted in transit to Canada.

[fol. 376] (Canadian official called in rejects the alien.)
Passage cost: 1,896 Ital. Lire—3d class. Naples to N. Y. 7/3L=.042×1,896+8=$87.63——

J. H. C.

Foreign Address: To Myself at Corrano Valdi, Prov. of Aquila, Italy.

Mr. Matthews: I move to exclude alien as being a person likely to become a public charge; having trachoma, a dangerous cont. disease, and having no passport for entry into the U. S.

J. A. Luttrell: I second the motion.
Chairman: Unanimous.

To the Alien: You have been denied admission to the U. S. for (reasons stated). No appeal lies in your case. If the Secy. of Labor decides that you are entitled to a refund of your passage money, it will be sent to the address given. You will be returned at the expense of the steamship company which brought you here by the first available ship of the same line. Do you understand your rights?
A. Yes.

Alien excluded and ordered deported.

—— ——, Secretary.

[fol. 377] Notice of Liability for Fine on Account of Bringing Diseased or Mentally Afflicted Aliens to the United States

U. S. Department of Labor, Immigration Service

Office of Commissioner, Port of New York

98884/972

February 15, 1924.

To Lloyd Sabaudo Line, Agents of the Vessel "Conte Verdi", 1 State Street, New York City, Aug. 8, 1923.

In conformity with the requirements of Rule 28 of the Immigration Regulations, you are hereby notified that the certificate of the examining surgeon, based upon a physical

and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 (or section 35) of the immigration act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the collector of customs at this port, prior to [fol. 378] her sailing, the sum indicated below as security for the payment of the said fine should it be imposed. Please submit evidence in duplicate.

Name of Alien: Capaldo, Angelo, 24-M., single—Farm hand, Italy.

Amount required to be deposited: $200.00. (Also ticket refund of $87.63.)

Defect or disability upon which fine is proposed: Trachoma.

H. R. Landis, Second Assistant Commissioner.

JVR. B.

Received the above notice Feb. 18, 1924, at —— M.
Lloyd Sabaudo, per P. Ferrara.

Witness: G. O'Donuoghue.

PLAINTIFF'S EXHIBIT No. 8

55380/617

April 19, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of April 14th, No. 98892/46, relative to proposed fine against the S. S. Conte Rosso, arriving on Sept. 28, 1923, for bringing to the United States the alien Giuseppe Cecconi, who was certified [fol. 379] as being afflicted with ringworm of the nails, a loathsome, contagious disease, which might have been detected by means of a competent medical examination at the port of embarkation.

The Line, it is noted, protests against the imposition of a fine, on the ground that this alien was examined carefully prior to embarkation, and the disease could not have been in existence then or he would not have been accepted for passage. In view of the official medical certificate, however, the Bureau finds itself unable to accord favorable consideration to this protest, and feels that the penalty as provided in Section 9 should be imposed.

You are directed, therefore, to take appropriate action whereby the sum of $200, now on deposit on account of said alien, may be covered into the Treasury as an immigration fine. The amount of passage is to be returned to the alien, who was deported.

W. W. Sibray, Assistant Commissioner General.

(Signed) W. W. Sibray, Apr. 21, 1924, Mail and Files.

Approved.

Robe Carl White, Second Assistant Secretary.

(Signed) Robe Carl White, Apr. 21, 1924, Mail and Files.

JWB.

[fol. 380] Recd. Bu. of Immigration Apr. 16, 1924, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

File No. 98892/46

April 14, 1924.

Commissioner General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, notice of liability for fine and refund of passage money in the case of Giuseppe Cecconi, ex SS "Conte Rosso" September 28, 1923.

Bureau file No. 55380/617. Letter of protest enclosed. Deported SS "Conte Verdi" October 20, 1923.

H. R. Landis, Second Assistant Commissioner, per B.

Encl. 11560.
Co.

[fol. 381] (Letterhead of Lloyd Sabaudo)

File No. 98892/46

March 22, 1924.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: With reference to "Notice of Liability for Fine" dated January 21st, 1924, and served on us January 23rd, 1924, in the case of Cecconi Giuseppe, who arrived on our SS. Conte Rosso, September 28th, 1923, and was certified for ringworm of the nails, we beg to protest the imposition of any fine in this case, and desire to submit the following facts:

1. That in bringing the above named alien to the United States, our Company had no intention to violate the law. We employ competent medical examiners of long practice and experience, and the reason the disease herein certified was not discovered is that the same had not developed and did not exist prior to embarkation.

2. That the passport of the above named alien was duly visaed by the American Consul.

In view of the above facts, we request that no fine be assessed, and that the Collector of Customs be instructed to [fol. 382] refund to us the amount he holds on deposit in this case.

Respectfully, Lloyd Sabaudo, Agency in New York.
M. Serrati, General Manager.

(Time Stamp.)
DAC:EA.

Notice of Liability for Fine on Account of Bringing Diseased or Mentally Afflicted Aliens to the United States

U. S. Department of Labor, Immigration Service

Office of Commissioner, Port of New York

98892/46

Jan. 21st, 1924.

To Lloyd Sabaudo, agents of the Vessel "Conte Rosso," 3 State St., N. Y. C., Sept. 28, 1923:

In conformity with the requirements of Rule 28 of the Immigration Regulations, you are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 (or section 35) of the immigration act of February 5, 1917.

[fol. 383] If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the collector of customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine should it be imposed. Please submit evidence in duplicate.

Name of Alien: Cecconi, Giuseppe, 37m married—stone mason—Italy—So. Italian.

Amount required to be deposited: $200. (Also ticket refund of $85.40.)

Defect or disability upon which fine is proposed: Ringworm of Nails.

H. R. Landis, Second Assistant Commissioner.

FS. B.

Received the above notice Jan. 23, 1924, at — M.

Lloyd Sabaudo, per P. Ferrara.

Witness: G. O'Donuoghue.

[fol. 384] U. S. Department of Labor, Immigration Service

Port of New York

98892/46

Oct. 20, 1923.

Commissioner General of Immigration, Washington, D. C.

SIR: In accordance with Department decision No.* 55380/617 of 10/19, 1923, the alien Cecconi Giuseppe was deported via S. S. Conte Verde sailing Oct. 20, 1923.

Respectfully, Harry R. Landis, Assistant Commissioner.

Remarks: ——.
File ——.

[fol. 385] 55380/617

October 18, 1923.

Commissioner of Immigration, Ellis Island, N. Y. H.:

Referring to your No. 98892/46, you are informed that the Department has denied the application for hospital treatment in the case of Giuseppe Cecconi (s/s Conte Rosso, SI-14).

For the Commissioner-General.

—— ——, Immigrant Inspector.

mgc.

(Decision telephoned to McRay at 11. no M. Oct. 19, 1923.)

55380/617—E. I.

October 17, 1923.

In re Giuseppe Cecconi, 37

This case comes before the Board of Review in the nature of an application for hospital treatment.

No hearing. Congressman Britten interested.

This record relates to a 37 year old, male, Italian alien, married, who arrived at the port of New York on Septem-

* The above advice must cover but one case as originally submitted to the Department.

ber 28th, leaves wife and three children abroad, never here before, coming to secure work and remain permanently and destined to a cousin in Chicago, Ill.

The alien was excluded as being a person afflicted with a loathsome contagious disease, namely, ringworm of the nails.

[fol. 386] The alien had 700 lire in his possession. The cousin did not appear in his behalf. No deposit was made. Under the circumstances treatment can not, of course, be granted.

It is recommended that the application for hospital treatment be denied.

W. W. Dunsler, Chairman, Secy. & Comr. Gen'ls Board of Review.

ES/CS.

So Ordered.

Robe Carl White, Second Assistant Secretary.

[fol. 387] Recd. Bu. of Immigration Oct. 17, 1923, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor

260. No. 98892/46

October 16, 1923.

Commissioner General of Immigration, Washington, D. C.:

In re Ceconni, Giuseppe, ex SS. Conte Rosso, Sept. 28, SI 14:

Referring to my letter of October 10, transmitting the record in the case of the above named alien, I have to state a deposit of $165 has been made to cover the cost of the first two months treatment and the supplemental medical certificate will be forwarded shortly.

H. R. Landis, 2nd Assistant Commissioner.

FMP.

(3 stamps.)

[fol. 388] Recd. Bu. of Immigration Oct. 11, 1923, Mail and Files.

Transmission of Record on Appeal

U. S. Department of Labor, Immigration Service

98892/46

Ellis Island, N. Y. H., Oct. 10, 1923.

Name of alien: Ceconni, Giuseppe, 37, ex SS. Conte Rosso, Sept. 28, SI 14.

Cause of exclusion: L. C. D. (Ringworm of Nails.)

Next sailing of line involved: Oct. 20.

Whether decision to be wired or mailed: Wire.

Record forwarded at request of Congressman Fred A. Britten; no petition has been filed and no money deposited; deportation stayed pending Department's decision.

H. R. Landis, 2nd Assistant Commissioner.

FMP.

Encl. 28001.

[fol. 389] SEB117

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., Oct. 6, 1923. 2 P. M.

Names of Aliens: Cecconi, Giuseppe, 37 m, married, Italy, So., Italian.

Present: Insp. Brophy (chmn.), Bruno & Sherman, Int. Yovtcheff.

LCD Insp. Smith. In hospital on arrival, still in hospital.

SI 14, SS "Conte Rosso" Sabaudo Line 9/28/23.

Embarked at Naples 9/17/23.

Alien, sworn, testified as follows in Italian:

Born at Chitta i Castello, Perugia, Italy where I have my wife, Clorinda and 3 children, ages 3-11 years, all in good health. Can read. Paid own passage. Stone mason.

Never in U. S. before. Going to Cousin, Befignani Fedelfianco, 337 W 59 Place, Chicago.

700 Lire. Ticket to Chicago. Did not telegraph. Coming to seek employment and remain permanently.

Medical Certificate #8516 10/3/23. This is to certify that the above described person has this day been examined and has been found to be afflicted with Ringworm of the nails, a loathsome contagious disease. In our opinion the [fol. 390] condition herein certified might have been detected by competent medical examination at the foreign port of embarkation. F. C. Makepeace and C. W. Chapin P. H. Surgeons.

Shows Italian passport issued at Perugia 9/3/23 and visaed by the American Consul at Rome 9/6/23, notation, born in Italy. Ever debarred or deported from the U. S. or Canada.

Q. You have been certified by the Medical Division at this station to be afflicted with ringworm of the nails, a loathsome contagious disease. What statement have you to make as why you should not be denied admission to the U. S.?

A. I have nothing to say.

Mr. Bruno: I move to exclude the alien as a person certified by the Medical Division to be afflicted with a loathsome contagious disease, ringworm of the nails.

Mr. Sherman: I second the motion.

Chairman: Unanimous.

To the Alien:

Q. You have been refused admission to the U. S. for the reasons (as stated) without the right of appeal. You will be deported at the expense of the steamship company which brought you in the same class you arrived. You cannot return within one year without first having obtained permission from the Sec. of Labor. Do you understand your [fol. 391] rights?

A. Yes.

Q. What did your passage cost?

A. 1,800 lire plus $8 head tax.

Q. If refund is ordered where do you wish it sent?

A. To my wife, Clorinda, S. Giustano, Lania Perugia, Italy.

Excluded and ordered deported.

S. E. Burger, Secretary.

PLAINTIFF'S EXHIBIT No. 9

55430/398

September 25, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of September 18th, No. 98906/853, relative to proposed fine against the S. S. Conte Rosso, arriving on March 31, 1924, for bringing to the United States the alien Pasquale Guistino, in excess of the annual quota allotted to Italy, which had been exhausted on December 6, 1923, he being also certified as afflicted with pulmonary tuberculosis which, in the opinion of the examining Public Health Surgeons, might have been detected by means of a competent medical examination at the foreign port of embarkation.

As the record shows that the alien resided in the United States for three years, and had been absent for less than [fol. 392] six months, it is felt that no penalty should be imposed under the Act of May 11, 1922, and the sum of $200, deposited under said Act, is to be returned to the depositor.

The Line protests against the imposition of a fine under Section 9 of the Act of February 5, 1917, on the ground that the alien was examined and found free from disease prior to embarkation. However, in view of the official medical certificate, it is felt that the penalty as provided in said Act should be imposed and you are directed to take appropriate action whereby the sum of $200 now on deposit, may be covered into the Treasury as an immigration fine. The amount of passage is to be returned to the alien, who was deported.

W. W. Sibray, Assistant Commissioner General.

(Signed) W. W. Sibray Sep. 27, 1925, Mail and Files.

Approved.

Robe Carl White, Acting Secretary.

(Signed) Robe Carl White, Sep. 27, 1924, Mail and Files.

JWB.

[fol. 393] Recd. Bu. of Immigration Sep. 20, 1924, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

File No. 98906/853

Sept. 18, 1924.

Commissioner General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, notice of liability for fine and refund of passage money in the case of Pasquale Guistino, ex SS. "Conte Rosso" March 31, 1924. Bureau file No. unknown; copy of Board minutes enclosed. Deported SS. "Conte Verdi" April 26th, 1924. Letter of protest enclosed.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division, per R. W.

Encl. 35974.
CO.
(Stamps.)

[fol. 394] Notice of Liability for Fine on Account of Bringing Diseased or Mentally Afflicted Aliens to the United States

U. S. Department of Labor, Immigration Service

Office of Commissioner, Port of New York

No. 98906/853

July 23, 1924.

To Lloyd Sabaudo Line, agents of the Vessel "Conte Rosso", 3 State St., New York City, 3/31/24:

In conformity with the requirements of Rule 22 of the Immigration Regulations, you are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown

herein, indicates that a fine should be imposed under the provisions of section 9 (or section 35) of the immigration act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed 30 days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the collector of customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine should it be imposed.

[fol. 395] Name of Alien: Pasquale Guistino (41-M—Longshoreman).

Amount required to be deposited: $200.00. (For ticket refund see Excess Quota Notice.)

Defect or disability upon which fine is proposed: Tuberculosis.

For the Commissioner:

W. W. Brown, Inspector in Charge of Law Division.

IMH.

Received the above notice Jul. 31, 1924, at 2 P. M.

Lloyd Sabaudo, per P. Ferrara, per R. W.

Witness: H. Stelman.

[fol. 396] Notice of Liability for Fine on Account of Bringing Aliens to the United States in Excess of Quota

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

No. 98906/853

July 23, 1924.

To Lloyd Sabaudo Line, agents of the Vessel "Conte Rosso," 3 State St., New York City, 3/31/24:

In conformity with the requirements of Rule 22 of the Immigration Regulations, you are hereby notified that it appears that the alien whose name is shown herein is in-

admissible under the provisions of the immigration act of May 19, 1921, as amended by the act of May 11, 1922, because the quota allotted to the country of his birth has been exhausted; hence that a fine should be imposed under the provisions of section 6 of the said act.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed thirty days from the date of this notice for that purpose, and the vessel upon which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed on her out- [fol. 397] ward-bound voyage upon condition that you deposit with the Collector of Customs at this port, prior to her sailing, as security for the payment of the said fine, should it be imposed, the sum indicated below. Please submit evidence in duplicate.

Name of alien: Pasquale Guistino (41-M-Longshoreman).

Amount required to be deposited: $200.00. (Also ticket refund of $81.36.)

Details of violation: Excess Quota—Italy.

For the Commissioner:

W. W. Brown, Inspector in Charge of Law Division, per R. W.

IMH.

Received the above notice Jul. 31, 1924, at 2 P. M.

Lloyd Sabaudo, per P. Ferrara.

Witness: H. Stelman.

[fol. 398] (Letterhead of Lloyd Sabaudo)

File No. 98906/853

New York, August 28th, 1924.

Hon. Commissioner of Immigration, Ellis Island, N. Y. Harbor, N. Y.

Sir: We are in receipt of your two (2) notices of "Liability for Fine" dated July 23rd, 1924, and served on us July 31st, 1924, in the case of Pasquale Giustino, who arrived on our s/s "Conte Rosso" March 31st, 1924. On August 19th, 1924, we deposited with the Collector of Customs the sum of $481.36, as follows:

Fine for Excess Quota	$200 00
Fine for Tuberculosis	200 00
For Passage	81 36
	$481 36

We desire to protest the imposition of any fines in this case and desire to submit hereunder the following stated facts:

1) That in bringing the above named alien to the United States our company did not wilfully violate the law.

2) That the record shows that the above named alien resided in the United States for three years and left the United [fol. 399] States on November 10th, 1923 for a temporary visit abroad. He was returning within four months of the date of departure and was, therefore, clearly exempt from the quota as a returning alien under section 2 D of the Act approved May 19th, 1921.

3) That the real reason why this alien was excluded is not because he arrived in Excess of the Quota, but because he was found to be afflicted with Tuberculosis. Our company employs competent medical examiners of long practice and experience who carefully examine each alien prior to embarkation. The condition herein certified was not detected because the disease had not fully developed at the time of the examination.

From the above enumerated facts it must be clear that our company did not violate the law. The company exercised due diligence in this case but the inadmissibility of the alien could not be foreseen prior to embarkation. We request, therefore, that no fines be assessed, and that the Collector of Customs be instructed to refund to us the amount he holds on deposit.

Respectfully, Lloyd Sabaudo. M. Serati.

DAC:BMS.

[fol. 400] U. S. Department of Labor, Immigration Service

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., April 5th, 1924, 11:00 P. M.

AD-173

Names of Aliens: Guistino, Pasquale, 41m, married, It. So. Ita.

Present: Messrs. Travis (Chm.), Scarlett and Sherman; Int. Casarico.

Tuberculosis. Insp. Burke.

S. I. 127, S. S. Conte Rosso, 3/31/24.

Embarked at Naples, March 19th, 1924. Quar. 3/29/24 6:55 P. M.

Alien duly sworn, testified thru Interpreter:

I am a native of Mola, Prov. Bari, where I have my wife, Rosins Copotoita, and a child five years of age in good health.

Read. Paid my own passage. Longshoreman.

Came to the U. S. the first time on November 6th, 1920 on a Steamship of the White Star Line, don't remember the name and month, and left here November 10th, 1923, on the Martha Washington.

Going to my cousin Guiseppe Maisto, Liguer St., Brooklyn, N. Y.

22.00 and 260 Lire. Did not telegraph.

[fol. 401] Coming here to remain permanently.

Shows Italian passport issued at Bari, Feb. 29th, 1924, and vised by the American Consul at Naples, March 11th, 1924. Vise #3324. Born in Italy. Exception to quota, returning to domicile in the U. S.

Medical Certificate 17676, 4/4/24.—This is to certify that the above described person has this day been examined and is found to be afflicted with Chronic, pulmonary, Tuberculosis, Active. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation.—(Signed) C. W. Chapin. R. L. Waugh.

Never barred or deported from the U. S. or Canada.

Q. You are advised that you have the right to have a friend or relative present at this hearing. Do you wish to avail yourself of that right?

A. No.

Q. What relatives have you in this country?

A. Just the cousins to whom I am going.

Q. What have you to show that you lived in the U. S. heretofore?

A. Show Italian Consular passport issued at New York October 19th, 1923. My income tax receipt is in my baggage.

Q. Why did you leave the U. S.?
A. To see my family.
Q. Did you intend to make your home permanently in Italy?
A. No.
Q. Did you declare your intention to become a citizen of the U. S.?
A. No.
Q. Have you any money or property here in the U. S.?
A. No.
[fol. 402] Q. How were you last employed while here?
A. Longshoreman.
Q. Have you ever been confined to the hospital?
A. No.
Q. Have you ever noticed that you had lung trouble?
A. No.
Q. The Doctors certify that you are suffering with Tuberculosis. This would prevent you from being permitted to land in the U. S. Have you any further statement you wish to make?
A. Nothing to say.
Q. What did you pay for your passage?
A. 2,000 Lire.
Q. What is your home address in Italy?
A. #4 Via Voala, Mola, Prov., Bari.

By Inspector Sherman: I move to exclude the alien as a person suffering with Tuberculosis, and also as arriving here in excess of the quota allotted to the country of his birth, namely, Italy.
By Inspector Scarlett: Seconded.
By the Chairman: Unanimous.

By the Chairman: You have been refused admission to the U. S. for the reasons stated. You have no right of appeal.
In the event of your deportation, you will be returned to the country whence you came by the first available ship of the line which brought you in the same class and without expense to yourself. The Secretary may order refund of your passage.
Q. Do you understand your rights?
A. Yes.

Agnes Doyle, Secretary.

[fol. 403] PLAINTIFF'S EXHIBIT No. 10

55435/103

December 1, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of November 8th, No. 98914/481, relative to proposed fine against the S. S. Conte Verdi, arriving on May 24, 1924, for bringing to the United States the alien Giuseppe Calabrese, who was certified as being afflicted with tuberculosis of skin which, in the opinion of the examining Public Health Surgeons, might have been detected by means of a competent medical examination at the foreign port of embarkation.

The line protests against the imposition of a fine, on the ground that the alien was examined carefully prior to being embarked and that the reason why the disease was not detected must be that it was not in existence at that time.

In view of the official medical certificate, the fact that the alien was excluded and deported thereunder and the lack of satisfactory proof that the disease did not exist, or could not have been detected, at the foreign port, it is felt that the penalty as provided in Section 9 of the Act of February 5, 1917, should be imposed.

You are directed, therefore, to take appropriate action whereby the sum of $200, now on deposit on account of said alien, may be covered into the Treasury as an immigration [fol. 404] fine. The amount of passage is to be returned to the alien, who was deported.

(Signed) G. E. Tolman, Assistant Commissioner General.

Dec. 1, 1924, Mail and Files.

Approved.

Robe Carl White, Acting Secretary.

(Signed) Robe Carl White, Dec. 1, 1924, Mail and Files.

JWB.

[fol. 405] Rec'd Bu. of Immigration Nov. 24, 1924, Mail and Files.

Address answers to "Commissioner of Immigration" and Refer to Number 98914/486.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

November 22nd, 1924.

Commissioner-General of Immigration, Washington, D. C.:

Reference is made to Bureau letter of November 15th, 1924, relative to proposed fine in the case of the alien Giuseppe Calabrese, file No. 55435/103, who arrived in the United States on the S. S. "Conte Verde", May 24, 1924.

As no copy of the Board record appears to have been forwarded in office letter to the Bureau under date of November 8th, I attach hereto copy of Board minutes, as requested.

For the Commissioner:

W. W. Brown, Inspector in Charge-Law Division.

MRM.

Inclosure-29853.

(Stamp.)

[fol. 406] U. S. Department of Labor, Immigration Service

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y.

EC-190

May 28, 1924—11:20.

Present: Messrs. Parbury (chm.), Scarlett and Miss Cohen; Int. Casarico.

Names of Aliens: Calabrese, Giuseppe 18-m., single, Argentine, Italian.

LPC Tuberculosis of face Insp. Fisch.

SI 110 S/S Conte Verde LS May 24, 1924. Quar. May 24. 1924 2:40 AM.

In hospital on arrival—still in hospital. Sailed from Naples May 14th.

Medical certificate #9605-18927 dated May 26, 1924. This is to certify that the above described person has this day been examined and is found to be afflicted with Tuberculosis of Skin (Face and Neck) which is not easily curable. In our opinion, the condition herein certified might have been detected by competent medical examination at the

foreign port of embarkation. (sgd.) Richey L. Waugh—Ralph E. Porter.

Alien being duly sworn, testified thru Interpreter:

[fol. 407] I was born in Buenos Aires, Argentine. Since the age of about four or five have been a resident of Barile province of Potenza Italy where I have my father Luigi and mother Rosario in good health Read—My father paid my passage—Farm laborer—Never in the U. S. Going to my cousin Vincenzo Suvzza 1161 Lincoln Pl., Brooklyn, N. Y. $2 (did not telegraph).

Coming here to seek employment and remain permanently.

Shows Italian passport issued at Melfi May 7, 1924 and visaed by the American Consul at Naples May 10, 1924 (visa #6906) Born in Arg.

Never debarred nor deported from the U. S. or Canada.

Q. You have the right to have a friend or relative present at this hearing. Do you wish to avail yourself of this right?

A. No.

Q. Was your father ever in the U. S.?

A. Yes.

Q. How long has he lived here?

A. 8 years.

Q. When did he return to Italy?

A. 4 years.

Q. Was he a citizen of the U. S.?

A. He was not.

Q. The medical officers at this station have certified that you have tuberculosis of the skin. Have you any reason to give why you should not be deported?

A. No.

Q. What did you pay for your ticket?

A. 1950 lire including head tax.

Q. What is your address in Italy?

A. Barile Potenza Italy.

[fol. 408] By Mr. Scarlett: I move to exclude as a person suffering from tuberculosis of skin and as a person likely to become a public charge.

By Miss Cohen: Seconded.
By Chairman: Unanimous.

To the alien:

You have been denied admission to the U. S. (naming reasons) You have no right of appeal.

You will be returned to the country whence you came by the first available ship of the line which brought you here in the same class you arrived without any expense to yourself.

The Secretary of Labor may in his discretion, order a refund of the money paid for your passage in which event it will be sent to you at the address given.

Q. Do you understand your rights?
A. Yes.

Etta Cohen, Secretary.

[fol. 409] 55435/103

November 15, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of November 8th, No. 98914/481, relative to proposed fine in the case of Giuseppe Calabrese, ex S. S. Conte Verde May 24, 1924. No copy of the Board record appears in the Bureau's file and it is requested that the same be forwarded for consideration.

—— ——, Commissioner General.

JWB.

Nov. 17, 1924, Mail and Files.

[fol. 410] Rec'd Bu. of Immigration Nov. 10, 1924, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

File No. 98914/481

November 8/1924.

Commissioner-General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation,

notice of liability for fine and refund of passage money in the case Giuseppe Calabrese ex S. S. "Conte Verde", May 24/1924.

Bureau file No. No bureau number—Letter of protest attached. Copy of board minutes enc/

Deported S. S. "Conte Verde" May 31/1924.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division.

MRM.
Encl.-29831.
(Stamps.)

[fol. 411] U. S. Department of Labor, Immigration Service

Office of Commissioner, Port of New York, N. Y. H.

#98914/486

September 18th, 1924.

To Lloyd Sabaudo Line, agents of the Vessel S. S. "Conte Verde," 3 State St., New York City, N. Y., 5/24/24:

In conformity with the requirements of Rule 22 of the Immigration Regulations, you are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of section 9 (or section 35) of the immigration act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed thirty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the collector of customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine should it be imposed.

[fol. 412] Name of alien: Calabrese, Guiseppe, 18-M-Single, Farm laborer.

Amount required to be deposited: $200. (Also ticket refund $83.65.)

Defect or disability upon which fine is proposed: Tuberculosis of skin.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division, per RW.

LP.

Received the above notice Sept. 26, 1924, at 2:30 M.

Lloyd Sabaudo, per P. Ferrara.

Witness: Samuel Young.

(Letterhead of Lloyd Sabaudo)

File No. 98914/486

October 22nd, 1924.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: We are in receipt of your "Notice of Liability for Fine" dated September 18th, 1924, and served on us September 26th, 1924, in the case of Calabrese Giuseppe, who arrived on our S.S. "Conte Verde" May 24, 1924.

[fol. 413] A bond has been filed with the Collector of Customs to guarantee payment, should the fine be imposed, of the sum of $283.65 as follows:

Fine for tuberculosis of skin	$200.00
Refund of Passage	83.65
Total	$283.65

We desire to protest the imposition of any fine in this case, and beg leave to submit herewith the following stated facts:

1. That in bringing the above named alien to the United States, our Company did not intentionally violate the law. We employ competent medical examiners of long practice and experience, and the reason the condition herein certified was not detected is that the disease did not exist prior to embarkation, and must have developed during the voyage.

2. That the record shows that the United States Public Health surgeons on Ellis Island have certified that in their

opinion "the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation." Our surgeons, however, insist that this alien did not have the disease prior to embarkation, and that it must have developed during the voyage.

[fol. 414] 3. That we desire to point out also that your surgeons have certified that the disease "might" have been detected. They were not positive that it could have been detected, otherwise they would have said that the disease could have been detected.

In conclusion, may we remind the Honorable Secretary of Labor that under the law we are not subject to a fine if we can prove to his satisfaction that our Company did exercise due diligence and that the inadmissability of the alien could not be foreseen prior to embarkation. We believe that the facts and arguments herein presented should convince the Honorable Secretary of Labor that our Company was duly diligent in this case. We request, therefore, that no fine be assessed, and that the Collector of Customs be instructed to cancel this fine upon his records.

Respectfully, Lloyd Sabaudo, Agency in New York.
M. Serrati, General Manager.

DAC:EA.

[fol. 415] PLAINTIFF'S EXHIBIT No. 12

Filed Feb. 11, 1927

55598/219

February 7, 1927.

Commissioner of Immigration, Ellis Island, N. Y. H.:

Reference is made to your letter of January 29th, No. 98980/243, relative to a proposed fine against the S. S. Conte Rosso, arriving on October 23, 1926, for bringing to the United States the alien Giuseppe Fusco, who was certified as being afflicted with chronic pulmonary tuberculosis which, in the opinion of the examining Public Health Surgeons, might have been detected by means of a competent medical examination at the foreign port of embarkation.

The protest of the Line against the imposition of a fine, dated January 26th, has been reviewed, together with the

medical certificates forwarded therewith. Briefly, it is set forth that the alien was examined on three separate occasions and by competent physicians before being accepted for passage; that no trace of the said disease was discovered at any of these occasions; that the disease, if really in existence at the time of embarkation was not then detectable; that the sea voyage might have had an adverse influence so as to make it readily detectable on arrival, and that the law has been complied with in every particular.

The alien gave no history of the disease. Indeed he was not questioned with regard thereto, and the only evidence [fol. 416] in the record is the official certificate itself. The Line's protest, in effect, is merely that the disease was not detected despite three examinations and therefore was not detectable. The Public Health Surgeons at your port ascertained the condition of the alien without difficulty, for he arrived on October 23, and the certificate was rendered on November 1st; they are familiar with the effect of an ocean voyage upon persons afflicted with this disease and undoubtedly made proper allowance therefor and they reached the conclusion, based on their knowledge of the disease, the time which had elapsed since embarkation, and the condition of the alien at the time of arrival, that the disease might have been detected at the foreign port. It is believed that the evidence placed in the record by the company is not sufficient to call in question the accuracy of the opinion expressed in the official medical certificate. It being believed that the alien was afflicted with said disease at the time of his embarkation, and that its existence might then have been detected by means of a competent medical examination, it is ruled that the penalty as provided in Section 26 of the Act of May 26, 1924, should be imposed. You are directed, therefore to take appropriate action whereby the sum of $1000 may be deposited in the Treasury as an immigration fine on account of said alien. The amount of passage money, $95, is to be returned to the alien, he having been deported.

Harry E. Hull, Commissioner General.

[fol. 417] Approved.

W. W. Husband, Second Assistant Secretary.

JWB.

(Signed) Harry E. Hull, Feb. 10, 1927, Mails and Files.
(Signed) W. W. Husband, Feb. 10, 1927, Mails and Files.

U. S. Department of Labor, Bureau of Immigration, Washington

No. 55598/219

February 7, 1927.

The Comptroller General of the United States, Washington, D. C.

DEAR SIR: The Bureau desires to inform you that a fine in the amount of $1000 has been imposed by action of this Department against the S. S. Conte Rosso, arriving at New York on October 23, 1926, on account of the alien Giuseppe Fusco.

The Collector of Customs, therefore, at the port of New York has been requested, through the appropriate immigration officer, to deposit the aforementioned amount in [fol. 418] the Treasury and to return the passage money in the sum of $95 to the alien (his parents, or guardian, etc.) Ellis Island file No. 98980/243.

Respectfully, Harry E. Hull, Commissioner-General.

1247.

JWB.

(Signed) Harry E. Hull, Feb. 10, 1927, Mails and Files.

[fol. 419] Recd. Bu. of Immigration, Feb. 1, 1927, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y. H.

File No. 98980/243

January 29, 1927.

Commissioner-General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, notice of liability for fine and refund of passage money in the case of Giuseppe Fusco.

(Stamp.)

Ex SS. "Conte Rosso" Oct. 23, 1926.

Bureau file No. 55360/501.
Deported on SS. "Conte Biancamano" 11/16/26.
Protest attached hereto.
For the Commissioner:
Frank Hayes, Inspector in Charge, Law Division.

Encl. #25081.
AK.
S.
Feb. 8, 1927, Ans'd.

[fol. 420] U. S. Department of Labor, Immigration Service

Office of Commissioner, Port of New York

No. 98980/243

November 18, 1926.

To Lloyd Sabaudo, agent of the vessel "Conte Rosso", Oct. 23, 1926, 3 State St., N. Y. C.:

You are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 26 of the "Immigration Act of 1924", or Section 35 of the Immigration Act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outwardbound voyage upon condition that you deposit with the Collector of Customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine should it be imposed.

[fol. 421] Name of alien: Giuseppe Fusco, 53 m, married, So. Italy, Ital.

Passage refund: $95.00.

Amount required to be deposited: $1,000.

Defect or disability upon which fine is imposed: Tuberculosis.

For the Commissioner:
Frank Hayes, Inspector in Charge, Law Division.

LM.
Received the Above Notice Nov. 26, 1926, at 1:45.
Lloyd Sabaudo, per P. Ferrara.

Witness: Samuel Young.

(Letterhead of Lloyd Sabaudo)

98980/243

January 26, 1927.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: We are in receipt of your "Notice of Liability for Fine" dated November 18, 1926, and served on us November 26, 1926, in the case of Giuseppe Fusco, who arrived on [fol. 422] the SS. "Conte Rosso" October 23, 1926.

A bond has been filed with the Collector of Customs, to guarantee payment, should the fine be imposed, of the sum of $1,095.00, as follows:

Proposed fine for "Tuberculosis"	$1,000.00
Proposed refund of passage	95.00
Total	$1,095.00

We desire to protest the imposition of any fine in this case, and beg leave to submit herewith the following stated facts:

1. That in bringing the above named alien to the United States our Company did not violate the law. We employ competent medical examiners of long practice and experience in the examination of immigrants, who carefully examine each alien prior to embarkation. This alien was permitted to embark on our steamer because our medical examiners found that he did not have Tuberculosis or any symptoms of this disease prior to embarkation.

2. That the record shows that this alien was in possession of a Quota Immigration Visa issued by the American

Consul at Naples, Italy, on October 1st, 1926. Attached to the Immigration Visa is the certificate of a competent practicing physician who enjoys the confidence of the American Consul in Naples, and who certified that this alien was free [fol. 423] from any contagious disease or from any other physical defect which might debar him from admission to the United States under Section 3 of the Immigration Act of 1917.

3. That, furthermore, this alien was carefully examined by the expert surgeons of the Royal Italian Emmigration Service in Naples, Italy, who found the alien free from Tuberculosis or any symptoms of this disease. Just prior to embarkation he was careully examined by our Board of Medical Examiners who also found him to be free from Tuberculosis or any symptoms of the disease. We are attaching hereto two affidavits of our Medical Examiners duly sworn to before the American Consul in Naples, Italy, in which our surgeons swear that they carefuly examined this alien prior to embarkation and found him to be free from Tuberculosis or any symptoms of this disease. For your convenience we are attaching also a translation of these affidavits.

4. That this alien, therefore, was examined not once before embarkation but on three separate occasions first by the physician whose certificate is attached to the Immigration Visa, secondly by the surgeons of the Royal Italian Emigration Service, and thirdly by our own medical examiners. All of these doctors found that the alien showed no [fol. 424] symptoms of Tuberculosis. Furthermore, it is a well known fact that a sea trip greatly affects persons suffering from Tuberculosis so that the disease can be readily detected ater the termination of the trip, whereas no symptoms of the disease could be detected before the voyage began. These facts can lead logically to but one conclusion, namely that the disease did not exist prior to embarkation or that it was of such a nature that it could not be detected by a competent medical examination at the foreign port of embarkation. The law requires that a transportation company must exercise reasonable diligence to prevent diseased aliens from being brought to the United States. The point at issue in this case, therefore, is not whether the alien had Tuberculosis when he arrived here or even prior to em-

barkation, but whether the company has taken every reasonable precautions to detect the disease. The affidavits of our doctors enclosed herewith prove conclusively that our company has done everything humanly possible to detect this disease and has, therefore, exercised reasonable diligence within the meaning of the statute. No fine, therefore, should be imposed in this case.

From the facts herein submitted it must be clear to the Hon. Secretary of Labor that our company was reasonably diligent within the meaning of the law and that, therefore, no fine should be imposed in this case.

[fol. 425] Trusting that you will give this matter your worthy consideration, we are

Respectfully yours, Lloyd Sabaudo Agency in New York. D. A. Caputi, Landing Agent.

DAC:EM.

Enclosures.

Io sottoscritto Muso Sebastiano di anni 50 medico fiduciario della Compagnia di Navigazione Lloyd Sabaudo ho sempre esercitato la professione medica fino dall 'anno 1902 avendo conseguito la laurea in Medicina e Chirurgia nella R. Universita di Napoli.

Nella mia qualita di medico fiduciario della Compagnia di Navigazione Lloyd Sabaudo ho l'incarico di esaminare tutti i passeggeri italiani nel porto di Napoli destinati ad imbarcare sui vapori della sopradetta Societa e diretti agli Stati Uniti.

Conosco le leggi federali americane sull 'immigrazione e conosco i requisiti fischi che ogni straniero deve avere per esservi ammesso.

Il giorno 4 Ottobre, 1926 ricordo di avere esaminato, fra gli altri, un certo Fusco Giuseppe passeggere di III classe che doveva imbarcare sul vapore Conte Russo il 13 s. w.

La mia visita sempre accurata e fatta col metodo a comin-[fol. 426] ciare dalla testa, occhi, ecci.fino su tutto il corpe dell'individuo, mentre, con opportune domande mi assicuro delle sue condizioni mentali.

Il Fusco Giuseppe non presentava alcum difetto fiscio e tutti i suoi organi apparivano in buone condizioni di funzionalita per cui non ho esitato a dare l'autorizzazione per il suo imbarco.

Puo darsi che circostanze nuove durante la traversata abbiano provocato qualche complicazione che ha reso palese

una deficenza organica che non era possibile per me o per qualunque altro mio collega rilevare in una regolare visita d'imbarco per quanto accurata.

D. Sebastiano Musu.

Napoli, 13 Dicembre, 1926.

Witnessed by D. Guarini e Maggio.

Kingdom of Italy,
City and Province of Naples,
Consulate General of the
United States of America:

Firmato e giurato avanti a me questo 14esimo giorno di Dicembre, 1926.

Howard K. Travers, Consul of the United States of America, Naples, Italy.

(Stamp.)
American Consulate General, Dec. 14, 1926, Naples, Italy.
(Stamp.)

[fol. 427] I, the undersigned, Musu Sebastiano, aged 50, hereby certify that:

I am the confidential Medical Doctor for the "Lloyd Sabaudo" Steamship Company, having graduated from the Royal University of Naples in the year 1902, and have practised Medicine and Surgery since the year 1902;

That while acting in the capacity of confidential Medical Doctor for the Lloyd Sabaudo Steamship Company, I have charge of the examination of all Italian passengers embarking on their steamers in the port of Naples and destined to the United States;

That I am very well acquainted with the Federal American Laws on Immigration and their requirements of passengers to be admitted in the United States;

That on October 4th, 1926, I recall having carefully examined one third class passenger, Fusco Giuseppe, prior to his embarkation on the S. S. "Conte Rosso" that sailed from Naples October 13th, 1926;

That my examination is always made accurately, beginning from the head, eyes, etc. throughout the body, while questioning the immigrant I assured myself of his mental status;

And that after such examination I have found Fusco Giuseppe in sound constitution and free from symptoms of any disease whatsoever, as proven by the fact that I authorized his embarkation.

It is probable that circumstances during the voyage have caused some complication and consequently a vital deficiency which could not be detected by me, or any of [fol. 428] my competent Medical colleagues prior to embarkation.

(Sgd.) Dr. Sebastiano Musu.

Naples, December 13th, 1926.

Witnessed by Guarini and Maggio.

Kingdom of Italy,

City and Province of Napies,

Consulate General of the United States of America:

Signed and Sworn to before — this 14th day of December, 1926.

(Sgd.) Howard K. Travers, Consul of the United States of America, Naples, Italy.

American Consulate General, Naples, Italy.

American Consular Service Fee Stamp $2.

[fol. 429] Lloyd Sabaudo, Societa Anonima per Azioni Capitale Emesso e Versato Lit. 1.50.000.000, Sede in Genova

Agenzia Generale di Napoli, Servizio Sanitario

(Stamp.)

Napoli, 4 Ottobre, 1926.

Avendo visitato il Fusco Giuseppe in partenza sul piroscafo Conte Rosso del 13 Ottobre 1926 in III classe per New York, dichiaro di averlo trovato di sana costituzione, immune da malattie contagiose e rispondente dal lato sanitario alle disposizioni Nord-Americane sulla immigrazione.

Il Sanitario del Lloyd Sabaudo. S. Musu. F. Calise.

American Consulate General, Dec. 14, 1926, Naples, Italy. (Stamp.)

Firmato e giurato avanti a me questo 14esimo giorno di dicembre, 1926.

Howard K. Travers, Console degli State Uniti d'America. (Stamp.)

[fol. 430] Witnessed by D. Guarini, S. Mezzio.
American Consular Service Fee Stamp $2.
Service No. 8946.

(Translation)

Lloyd Sabaudo, Home Office in Genoa

General Agency in Naples, Board of Medical Examiners

Naples, October 4th, 1926.

We, the undersigned, hereby certify that at the examination of third class passenger, Mr. Fusco Giuseppe, prior to his embarkation on our "S. S. Conte Rosso", at Naples, October 13th, 1926, he was found free from symptoms of any contagious disease, and otherwise in conformity with all the requirements of the U. S. Immigration Laws.

(Sgd.) Lloyd Sabaudo's Surgeons. Dr. Sebastiano Musu. Dr. F. Calise.

American Consulate General, Naples, Italy.

[fol. 431] Signed and sworn to before me this 14th day of December, 1926.

(Sgd.) Howard K. Travers, Consul of the United States of America in Charge at Naples, Italy.

American Consular Service Fee Stamp $2.
Service No. 8946.

55202/749. Dec. 2, 1926, Filed

November 27, 1926.

Hon. Thomas S. Butler, M. C., House of Representatives, Washington, D. C.

My Dear Congressman Butler: With further reference to your interest in the case of Mr. Giuseppe Fusco, who desired to remain in this country for hospital treatment, please be advised that the Bureau is now in receipt of a report from the Commissioner of Immigration, at Ellis Island, New York Harbor, which indicates that this man's deportation has been effected.

Mr. Fusco was deported on the ground of having been certified by officials of the Public Health Service to be af-

[fol. 432] flicted with tuberculosis pulmonary chronic. As you are probably aware, persons afflicted with tuberculosis in any form are mandatorily debarred from entering the United States by Section 3 of the Immigration Act of February 5, 1917. Persons excluded on this ground are not entitled to appeal their cases, and for this reason Mr. Fusco's case did not come before the Department.

Cordially yours, Harry E. Hull, Commissioner General.

(Signed) Harry E. Hull, Nov. 29, 1926, Mails and Files.

EM.
R.

[fol. 433] Recd. Bu. of Immigration Nov. 24, 1926, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

98980/243

(Stamp.) November 23, 1926.

Commissioner-General of Immigration, Washington, D. C.:

Replying to Bureau letter of November 19, No. 55360/501, regarding Giuseppe Fusco ex the SS "Conte Rosso" October 23, 1926, I have to inform you that he was deported on the SS "Conte Biancamano" November 16, 1926. He was excluded by a board of special inquiry on November 4, 1926, having been certified to be afflicted with tuberculosis pulmonary chronic. A copy of the minutes of the board of special inquiry is enclosed.

Byron H. Uhl, First Assistant Commissioner.

EF.
Incl.—30471.
(Stamp.)

[fol. 434] U. S. Department of Labor, Immigration Service

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., November 4, 1926, 11:25

EC-117

Present: Messrs. Parbury (Chmn.), Collins and Miss Cohen; Andriaccio interpreting.

Names of Aliens: Fusco, Giuseppe, 53m., married, So. Italy-Italian.

Tuberculosis Insp.: Johnson.

S. I. 24 S/S Conte Rosso L. S. October 23, 1926.

From T. D. November 3, 1926, 9:30 AM.

Naples October 13th—In hospital upon arrival.

Medical certificate #4761, dated November 1st, 1926.—This is to certify that the above described person has this day been examined and is found to be afflicted with Tuberculosis Pulmonary Chronic which is not easily curable. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation.—(Sgd.) R. L. Beadles—A. J. Aselmeyer.

[fol. 435] Alien being sworn by Insp. Parbury, testified thru interpeter:

I was born in Mezzano province of Caserta Italy where I have my wife Francesca Ragazzino and eight children, ages four to twenty-five years, all in good health.

Read.

I paid my passage.

Laborer.

In the U. S. on five previous occasions, arriving here March 1901 do not remember the name of the steamer and left here eighteen months later—the second time was here sixteen months, the third time thirteen months, the fourth time, four years, the last time I was here about seven years arriving here August 1915 or 1916 on the Taormina and left June 8, 1923 on the Patria from New York.

Going to son Domenico and daughter Giovannina who is married to Domenico Natale, 206 Ann St., Phoenixville, Pa.

$44. No ticket—did not telegraph.

Coming to remain permanently.

Shows Italian passport issued at Caserta Sept. 20, 1926—quota immigration visa #1213 issued by Alfred T. Nestor Consul of the U. S. at Naples Italy October 1st, 1926.

Never debarred or deported from U. S. or Canada.

Q. You have the right to have a friend or relative present at this hearing. Do you wish to avail yourself of this right?
A. I waive my right.
[fol. 436] Q. Have you any property in the U. S.?
A. No.
Q. Have you declared your intention to become a Citizen of the U. S.?
A. No.
Q. How long has your son been here?
A. Ten years.
Q. Is he a Citizen of the U. S.?
A. Yes.
Q. Is he married?
A. No.
Q. The medical officers at this station have certified that you have tuberculosis. Because of that you will be denied admission to the U. S. Have you any statement you wish to make?
A. No.

By Mr. Collins: I move to exclude as a person suffering from tuberculosis.
By Miss Cohen: Seconded.
By Chairman: Unanimous.

To the alien:

Q. What did you pay for your passage?
A. 2,470 lire including head tax.
Q. What is your foreign address?
A. Via Orticelli Mezzano province of Caserta, Italy.
You have been denied admission to the U. S. as a person suffering from tuberculosis. You have no right of appeal.
You will be returned to the country whence you came by the first available ship of the line which brought you here in the same class you arrived without expense to yourself. The Secretary of Labor may in his discretion order a refund of the money paid for your passage.

[fol. 437] Also, it will be unlawful for you to return to this country within one year of the date of your deportation without having first obtained permission from the Secretary of Labor to do so.

Q. Do you understand?

A. Yes.

Etta Cohen, Secretary.

11:40.

Nov. 20, 1926, Filed

55360/501

November 19, 1926.

Hon. Thomas S. Butler, M. C., House of Representatives, Washington, D. C.:

My Dear Congressman Butler: In reply to your letter of November 9, 1926, with which you forwarded a communication from Mr. Louis Cutillo, of Pennhurst, Pennsylvania, concerning the desire of one Giuseppe Fusco to remain in the United States for hospital treatment, please be advised that the Bureau has not been able to locate a record pertaining to the detention of Mr. Fusco.

The Commissioner of Immigration, Ellis Island, New York Harbor, is being requested to furnish the Bureau with [fol. 438] a report covering the case of Mr. Fusco, upon receipt of which, I shall be glad to communicate with you further.

Very truly yours, Harry E. Hull, Commissioner General.

(Signed) Harry E. Hull, Nov. 19, 1926, Mails and Files.

AC/MSC.
R—.

55360/501

November 19, 1926.

Commissioner of Immigration, Ellis Island, New York Harbor:

Please furnish the Bureau with a report in the case of one Giuseppe Fusco, ex SS. "Conte Rosso", October 23, 1926, who is said to have been detained in the hospital at Ellis Island, #1469.

The Bureau is informed that interested persons are anxious that Mr. Fusco remain in the United States and are able and willing to pay the expenses of his hospital treatment.

Please expedite your report in this case.

G. E. Tolman, Assistant Commissioner General.

AR/MSC.
R.

(Signed) G. E. Tolman, Nov. 19, 1926, Mails and Files.

[fol. 439] Received Nov. 10, 1926, Office of Commissioner General.
(Stamp.)

(Letterhead of House of Representatives, U. S.)

November 9, 1926.

Honorable Harry E. Hull, Commissioner General of Immigration, Department of Labor, Washington, D. C.

DEAR MR. COMMISSIONER: I inclose you herewith a letter I have just received from my constituent, Louis Cutillo of Pennhurst, Pa., concerning the desire of Fusco, Giuseppe to remain in this country for hospital treatment, he having arrived in this country on October 23d.

You will notice Cutillo says people interested in this man are willing to have him treated and will pay the hospital expenses; that he has a son living in Phoenixville who is willing and financially able to support him if it should become necessary.

I shall be indebted to you if you will look at your records to see what they show concerning him and inform me [fol. 440] whether his request can be complied with.

With best regards to you, I am,

Very sincerely yours, Thomas S. Butler, M. C. 8th Pa. Dist.

Indexed Nov. 19, 1926, Ans'd.
(Stamp.)

(Letterhead of Pennhurst State School)

Pennhurst, Pa., Nov. 8, 1926.

Hon. Thomas S. Butler, Washington, D. C.

My Dear Mr. Butler: On October 23rd, 1926, Fusco, Giuseppe arrived in this country on the Steamship Conto Rosso and he was detained in the hospital on Ellis Island, #1469.

The Commissioner dismissed the case ordered him to return to Italy unless he be treated for his trouble.

We are willing to have him treated here and will pay the hospital expense in advance if this permission can be secured.

I pray your Honor to use your best influence in order that this permission can be granted.

[fol. 441] Fusco, Giuseppe, has a son residing in Phoenixville who is an American citizen and who is willing and financially able to support his father if necessary.

Very respectfully yours, Louis Cuttillo.

Plaintiff's Exhibit No. 14

55480/553

April 30, 1926.

Commissioner of Immigration, Ellis Island, N. Y. H.:

In reply to your letter of April 15th, No. 98960/407, and with which you forwarded a protest of the Line against the imposition of a fine in the case of Leonardo Perazzi, ex S. S. Conte Rosso, December 21, 1925, you are advised that no change is to be made in the instructions of April 19th, under which a fine of $1000 is to be imposed and passage money refunded to the alien's father.

The law penalizes a steamship which brings to the United States an alien afflicted with disease, etc., etc., and does not exempt from the penalty, a vessel which brings such an alien merely that he may pass in transit through this country. The exempted classes are enumerated in the law and unless an alien afflicted with feeble mindness, etc., or

who is illiterate, or otherwise mandatorily excluded from admission for permanent residence, is permitted to pass in [fol. 442] transit, thereby placing him within the scope of the 9th proviso Section 3, the fine may be imposed.

In this instance the Bureau and Department, after reviewing the evidence with care, found that the condition of the alien could have been detected at the time he was embarked, and his inadmissibility to the United States ascertained at that time. In transporting him the company assumed all the responsibility placed upon it by the law and in view of the alien's condition, it should have concluded that, in all probability, he would not be allowed to enter Canada as a permanent resident, and would be refused permission to enter the United States for any period whatsoever. It is admitted that the present instance is not as serious as though the alien were afflicted with a dangerous, or loathsome contagious disease, but the law itself makes no distinction between such causes for exclusion, and you may carry out the instructions of the 19th instant.

Harry E. Hull, Commissioner General.

JWB.

(Signed) Harry E. Hull, May 1, 1926, Mails and files.

Approved May 1, 1926. Mail and files.

W. W. Husband, Second Assistant Secretary.

Mr. Winings, Sol. office, approved this as a matter of law.

J. W. B.

[fol. 443] Recd. Bu. of Immigration Apr. 16, 1926, Mails and Files.

Address Answer to "Commissioner of Immigration" and Refer to Number 98960/407.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

April 15, 1926.

Commissioner General of Immigration, Washington, D. C.:

Supplementing office letter of the 13th instant, relative to fine proceedings in the case of Leonardo Perazzi, I en-

close herewith letter of protest from the Lloyd Sabaudo.

Byron H. Uhl, First Assistant Commissioner, per H. Allen.

AK.
Encl. 39856.
Apr. 30, 1926, Ans'd.
(Stamp.)

[fol. 444] (Letterhead of Lloyd Sabaudo)

Your File No. 98960/407

April 5, 1926.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: We are in receipt of your "Notice of Liability for Fine" dated January 30, 1926, and served on us February 5, 1926, in the case of Perazzi Leonardo, who arrived on our S. S. "Conte Rosso" December 21, 1926.

A bond has been filed with the Collector of Customs to guarantee payment, should the fine be imposed, of the sum of $1,188—as follows:

Proposed Fine for Feeblemindedness	$1,000
Proposed Refund of Passage	188
Total	$1,188

We desire to protest the imposition of any fine in this case, and beg leave to submit herewith the following stated facts:

1. That in embarking the above named alien on our steamer, our Company did not violate any provision of the Immigration Laws of the United States. The alien was not destined to the United States, but to Canada. He was, [fol. 445] therefore, merely passing through the United States, and being in possession of a transit certificate issued to him by the American Consul in Naples, Italy, he had a perfect right to proceed in transit to Canada. The only case where the transit privilege can be denied to an alien in possession of a transit certificate issued by an American Consul, is where the alien is suffering from a loathsome or dangerous contagious disease which might

endanger the health of our citizens. Feeblemindedness, however, is a condition which is neither dangerous nor contagious, and if the Canadian Authorities had been willing to admit this alien to Canada (as they would have had to do if he were a citizen of Canada) you could not have denied to him the privilege of passing through the United States to his destination in Canada.

2. That we have carefully examined the law, and have failed to find any provision which would warrant you in imposing a fine of $1000 against our Company in this case. The law gives you the right only when an alien is coming to the United States to reside therein permanently. To suppose that Congress intended to fine transportation companies in cases of aliens rejected by the Canadian Authorities is an erroneous supposition, for Congress had no such intention, it being concerned with aliens seeking permanent admission to the United States.

[fol. 446] 3. That it has always been the practice at Ellis Island not to serve Notices of Intention to Fine in cases where the aliens are not destined to the United States, but are merely passing through to foreign contiguous territory. The reason for that is that at Ellis Island they have always understood that the law does not permit them to impose fines in cases of this kind. We believe, therefore, that this notice has been sent to us in error.

4. That our Company employs competent medical examiners of long practice and experience who carefully examine each alien prior to embarkation. This alien was permitted to embark because our medical examiners did not believe that he can be properly classed as feebleminded. They state that their record shows that this alien was somewhat stupid, but not to the degree which would render him feebleminded. They point out also that the alien has been employed steadily on a farm in Italy where he performed his work in a satisfactory manner. Also that the alien was able to answer to their entire satisfaction all questions regarding the work he performed on the farm, and this led them to the conclusion that the alien was not feebleminded.

5. That the record shows further that this alien was accompanied by his mother who was admitted in transit to

Canada, and was destined to his father who is a citizen [fol. 447] of Canada.

In view of the facts above stated, we request, therefore, that no fine be imposed in this case, and that the Collector of Customs be informed to cancel this fine upon his records.

Thanking you for the kind consideration which you will give to this matter, and assuring you of our highest esteem, we are,

Respectfully, Lloyd Sabaudo, Agency in New York.
M. Serrati, General Manager.

DAC:EA.
Indexed.

55480/553

April 19, 1926.

Commissioner of Immigration, Ellis Island, N. Y. H.:

Reference is made to your letter of April 13th, No. 98960/407, relative to a proposed fine against the S.S. Conte Rosso, arriving on December 21, 1925, for bringing to the United States the alien Leonardo Perrazzi, who was certified as being feebleminded. In the opinion of the examining Public Health Surgeons, this condition might have been detected by means of a competent medical examina- [fol. 448] tion at the foreign port of embarkation.

The Line, it is noted, has made no protest against the imposition of a fine.

In the Bureau's opinion, the condition mentioned above did exist, and might have been detected by means of a competent medical examination, at the time the alien embarked.

It is ruled, therefore, that the penalty as provided in Section 26 of the Act of May 26, 1924, should be imposed and you are directed to take appropriate action whereby the sum of $1000 may be deposited in the Treasury as an immigration fine in this case. The amount of passage money, $188, is to be returned to the alien's father, Pietro Perazzi, 115 Elm Street, Toronto, Canada, by whom it was paid. The applicant was deported.

Harry E. Hull, Commissioner General.

(Signed) Harry E. Hull, April 21, 1926, Mails and Files.

Approved.

W. W. Husband, Second Assistant Secretary.

(Signed) W. W. Husband, Apr. 21, 1926, Mails and Files.

JWB.

[fol. 449] U. S. Department of Labor, Bureau of Immigration, Washington

No. 55480/553

April 19, 1926.

The Comptroller General of the United States, Washington, D. C.

DEAR SIR: The Bureau desires to inform you that a fine in the amount of $1000 has been imposed by action of this Department against the S.S. Conte Rosso arriving at New York on December 21, 1925, on account of the alien Leonardo Perazzi.

The Collector of Customs, therefore, at the port of New York, has been requested, through the appropriate immigration officer, to deposit the aforementioned amount in the Treasury and to return the passage money in the sum of $188 to the alien (his parents, or guardian, etc.).

Ellis Island file No. 98960/407.

Respectfully, Harry E. Hull, Assistant Commissioner General.

(Signed) Harry E. Hull, Apr. 21, 1926, Mails and Files.

JWB.

[fol. 450] Indexed.

Recd. Bu. of Immigration Apr. 14, 1926, Mails and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, N. Y. H.

98960/407

April 13, 1926.

Commissioner-General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, notice of liability for fine and refund of passage money in

the case Leonardo Perazzi ex S.S. "Conte Rosso" December 21, 1925.

(Stamp.)

Bureau file No. 55480/553.

Deported S.S. "Conte Biancamano" January 23, 1926.

No letter of protest.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division.

Encl. 39825 AK.

Apr. 19, 1926, Ans'd.

[fol. 451] U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, N. Y. H., N. Y.

No. 98960/407

January 30, 1926.

To Lloyd Sabaudo Line, agents of the Vessel "Conte Rosso" (Master, Agent, Owner or Consignee), 3 State St., New York City, 12-21-25:

You are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 26 of the "Immigration Act of 1924", or Section 35 of the Immigration Act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed 60 days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outwardbound voyage upon condition that you deposit with the Collector of Customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine should it be imposed. Please submit evidence in duplicate.

[fol. 452] Name of alien: Perazzi, Leonardo, 17 m., single, Italy—Ital.

Passage refund: $188.

Amount required to be deposited: $1,000.

Defect or disability upon which fine is imposed: Feeble-minded.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division.

EG.

Received the above notice Feb. 5, 1926, at — M.

Lloyd Sabaudo, per P. Ferrara.

Witness: G. O. Donuoghue.

[fol. 453] Recd. Bu. of Immigration Jan. 28, Mail and Files.

Report of Execution of Department Decision

U. S. Department of Labor, Immigration Service

98960/407

Port of New York, Jan. 23, 1926.

Commissioner General of Immigration, Washington, D. C.:

SIR: In accordance with Department decision No. *55480/553 of 1/23, 1926, the alien Perazzi Leonardo (accompanied by attendant Rocco Visconti) was deported via S. S. Conti Biancamano sailing Jan. 23, 1926, and the alien Morra Vincenza was duly admitted in Transit to Canada Jan. 25, 1926.

Respectfully, (Name:) Byron H. Uhl, (Title:) First Asst. Commissioner.

Remarks: ——.

File ——.

[fol. 454] U. S. Department of Labor, Immigration Service

Port of ——

Inclosure No. 98128

Ellis Island,
New York Harbor, January 8, 1926.

The Honorable Secretary of Labor, Washington, D. C., through the Honorable Commissioner of Immigration, Ellis Island, N. Y. H.:

The petition of Morra Vincenza, respectfully represents as follows:

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* The above advice must cover but one case as originally submitted to the Department.

1. That she and her son, Perazzi Leonardo, arrived ex S. S. Conte Rosso, December 22, 1925, in Transit to Canada.

2. That her son, Leonardo who was excluded as feeble-minded, and she as the accompanying alien.

3. That her son never needed, and does not at present need any special or particular care, as he acts perfectly normal and has always taken care of himself. Even here, at Ellis Island, he is not kept at the hospital but is among the other passengers, away from her, and takes care of himself.

[fol. 455] 4. The Canadian Government has authorized her admission to Canada, to join her husband, provided that the boy, Perazzi Leonardo, 17 years old, is considered able to dispense with her care on his way back. The Lloyd Sabaudo S. S. Company is willing to assume full responsibility, and if required, place the boy in charge of the Physician on Board or appoint an officer as guardian during his trip back, in place of the mother.

5. In view of the above facts, the undersigned respectfully petitions the Honorable Secretary of Labor to authorize the Immigration Authorities at Ellis Island to accept the substitution of the Physician on board, or an officer in charge, to take her place in accompanying the boy on his return trip, so that she may be permitted to join her husband in Canada.

Respectfully submitted.

Vincenza Morra. X.

[fol. 456] U. S. Department of Labor, Immigration Service

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y.

60-Cel.

Dec. 29, 1925. 11:35 a. m.

Present: Messrs. W. J. Zucker (Chm.), Wood and Lapointe; Mrs. Yovtcheff, Int'r.

Names of Aliens: Morra, Vincenza, 43, f. Married; Perazzi, Leonardo, 17; son, Italy-So., Italian.

"Illiterate; in transit; son placed in hospital 12/22/25, 3 p. m."—Insp. Tufarolo.

SI 10. S. S. Conte Rosso, 12/21.

Lloyd Sabauda from Naples 12/11/25.

Alien (Vincenza), sworn by Insp. Zucker, testified:

Came with my son, Leonardo, aged 17, who is in the hospital.

Native of Monteleone, Avellino, Italy, where I have my father, Rocco, in good health.

I cannot read. (Alien refused test 4/1720, Italian.)

My husband, Pietro Perazzi, 115 Elm St., Toronto, Canada, to whom we are going, paid our passage.

[fol. 457] Housekeeper.

Never in the U. S. before.

Have 10,000 Lire and R. R. tickets for two.

I come here in transit to join my husband.

(Exhibits Italian passports issued at Ariano 11/30/25, each bearing transit certificate of U. S. Consul at Naples, Italy, Dec. 8, 1925, indicating that aliens are in transit to Canada via New York, signed by Howard K. Travers, Consul, No. 109 and 110 for mother and son respectively.)

Never barred from the U. S. nor Canada.

Waives right.

Q. How long has your husband been in Canada?

A. 14 years.

Q. How many children have you?

A. Only one son, Leonardo.

Q. Have you an affidavit or letter from your husband?

A. No.

Q. What relatives have you in the U. S.?

A. My husband, sister and brother.

Q. Has your husband ever lived in the U. S.?

A. No.

Witness, sworn by Insp. Zucker, testified:

Name: Leonardo Visconte; 37 Columbus Ave., Tuckahoe, N. Y.

Q. For whom do you call?

A. My wife's sister. (Names alien.)

Q. Where is your wife?
A. In Italy.
Q. To whom is your sister-in-law going?
A. To her husband.
Q. What is his name and address?
A. Pietro Perazzi, 76 Walter St., Toronto, Can.
[fol. 458] Q. How long has her husband been in Canada?
A. I don't know.
Q. What do you wish to do for her?
A. I want to take her to my home and send for her husband.
Q. When did you last hear from her husband?
A. I received a telegram last night. (Exhibits telegram, dated at Toronto, Dec. 25, 1925, addressed to Leonardo Lamanna, 87 Columbus Ave., Tuckahoe, N. Y., reading: "Vincenzo Morra is in New York with her son. She arrived on the Conte Rosso. Write to me about her." (Sgd.) Prazzo, Pietro.)
Q. What is her husband doing in Canada?
A. He is a laborer.

Mr. Lapointe: I move to defer pending return of son from hospital.
Mr. Wood: Second.
Mr. Zucker: Unanimous.
11.48 a. m.

O. E. Lovejoy, Sec.

[fol. 459] U. S. Department of Labor, Immigration Service

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y.

Stimpson—108

December 30, 1925—11:05 A. M.

Present: Messrs. Wm. Zucker (chmn.), Wood and Lapointe.
Names of Aliens: Morra, Vincenza, Morra, Leonardo, Italy—South.
No. 10.
Deferred Case.
Def. Dec. 29/25. C. E. L. 60.

S. S. "Conte Rosso", 12/21/25.
Casarico, Int.
(Minutes of previous hearing made a part of this hearing.)
Medical Certificate: 7462. 2930. N. Y., 12/29/25.
Leonardo.
Age 17.
This is to certify that the above described person has this day been examined, and is found to be feeble minded. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation.
[fol. 460] O. M. Spencer, Assistant Surgeon.
J. J. Loughnan, A. A. Surgeon.

(Mr. Sullivan, Representative of the Canadian Government, appeared and stated. "The minor alien in this case is not eligible for entry into Canada, and the mother is excluded as an accompanying alien. Mother's case on appeal to the Canadian Authorities.)

Alien recalled:

By Mr. Zucker:

Q. Your son is certified by the Medical Officers at this Station to be feeble minded. You and your son have been denied admission to Canada. The Board is compelled to exclude your son because of his certified condition. Therein lies no appeal, except to a Board of Medical Examiners. At which re-examination you also will be allowed to have a physican present at your own expense. Would you desire to appeal to such a Board?
A. I would like to notify my husband of this fact. I know the boy has not a good mind, but I want to appeal to a board of medical examiners. It is only through typhus fever that he is in this condition.
Q. Where was your son born?
A. Monte Leone di Puglia, Avolina, Italy.
Q. Your son was never in the U. S. or Canada?
A. No.

(To the son:)

Q. What is your name?
A. Leonardo Prozzi. (Morra.)

Q. How old are you?
A. 17.
Q. Can you read?
A. No.

[fol. 461] (Tested and cannot read test Class 4—5743.) (English translation of the test is as follows: "Thou madest him to have dominion over the works of thy hands; thou hast put all things under his feet. All sheep, and oxen, yea, and the beasts of the field. Ps. 8; 6-7.")

Q. You believe you can arrange for a re-examination of your son within five days?
A. I don't want to appeal to a medical board.

By Mr. Lapointe: I move the exclusion of the younger alien as feeble minded. Also as unable to read.
By Mr. Wood: I second the motion.
By Mr. Zucker: Unanimous.

Excluded Dec. 30/25.
Certificate.
Section 18, Immigration Laws, 1917.
Leonardo Perozzi, age 17 years, native of Italy—So.
Arrived 12/22/25, per S. S. Conte Rosso, Certified Feeble-minded. 12/28/25.
The above-named alien, rejected by the Board of Special Inquiry, is, in my opinion, helpless from cause above stated for the purposes contemplated by Section 18.
G. M. Corput, Surgeon, P. H. Service.

By Mr. Lapointe: The Medical Division having issued a certificate under Section 18, to the effect that the younger alien is helpless because of his certified condition, I move to exclude the mother under the provisions of Section 18, as an accompanying alien. Also on the ground that she is unable to read.
[fol. 462] I also move to exclude both aliens under Section 13-A-1 of the Act of 1924, in that they are quota immigrants not in possession of any immigration visaes.
By Mr. Wood: I second the motion.
By Mr. Zucker: Unanimous.

(Appeal for mother—no appeal for son.)

Q. How much did you pay for your passage?

A. 5,000 lire each from Naples to New York. (Second class.)

Q. What is your address?

A. Vica Lurma, Monte Leone di Pugli, Avellino, Italy.

You have been denied admission. You have the right to appeal to the Hon. Sec. of Labor at Washington, D. C., from the excluding decision of this Board, who will review the evidence taken in your case. He will decide whether you shall be admitted or debarred. His decision is final. (No appeal from excluding decision for the boy [son].)

If deported you will be returned at the expense of the S. S. Co. in the same class in which you arrived and you may not return to this country without the prior consent of the Hon. Sec. of Labor.

If deported you may be granted a refund of the money paid for your transportation, in the discretion of the Hon. Sec. of Labor.

Q. Do you understand?

A. Yes.

Q. Do you wish to take an appeal?

A. Yes.

Excluded:

M. Chaney, Secretary.

11:30 A. M.

[fol. 463] Alien's Appeal from Decision of Board of Special Inquiry

U. S. Department of Labor, Immigration Service

Date: Dec. 30, 1925.

To the Honorable Secretary of Labor (through official channels):

I desire to appeal from the decision of the Board of Special Inquiry.

Vincenza (her X mark) Morra.

Witness to signature (if alien signs by mark): Edw. J. Lapointe.

Ship: Conte Rosso.
Date of arrival: 12/21/25.
S. I. No. 10.
Cause of exclusion: Sec. 18—Unable to read—No. Im. Visa.
Minute references: N. S. 108.
Appeal filed Dec. 30, 1925, JL.
Dec. 30, 1925.

[fol. 464] PLAINTIFF'S EXHIBIT No. 15

55435/875

April 8, 1925.

Commissioner of Immigration, Ellis Island, N. Y. H.:

Reference is made to your letter of April 1st, No. 98930/625, relative to proposed fine against the S. S. Conte Verdi, arriving on January 19, 1925, for bringing to the United States the alien Salvatore Crimi, a quota immigrant who was in possession of a non-quota immigration visa only, he having been certified as afflicted with total blindness, a physical defect which may affect ability to earn a living and which, in the opinion of the examining Public Health Surgeons, might have been detected by means of a competent medical examination at the foreign port of embarkation.

The Line protests against the imposition of a fine, on the ground that the alien had obtained a non-quota immigration visa on his claims to being a student, coming to the United States to pursue his studies. It calls attention to the alleged father that the alien's brother, in the United States, is worth $15,000, and his father is a citizen of this country. It declares that the alien's statement to the Board of Special Inquiry, to the effect that he had no intention of leaving the United States at any time in the future, was not what he told the Consul, and that its agent questioned him particularly along this line, being satisfied that he would remain for a temporary period only. It states that the Consul is in possession of a list of the schools approved by the Secretary of Labor, and is supposed to grant visaes to

[fol. 465] alleged students only when they are going to an approved school, and that it considered that so important an educational institution as the "New York Institute for the Education of the Blind" was, and must be, on this list.

The record contains copies of correspondence relative to this alien, and especially letters between the American Embassy and others. It is stated that the alien was proficient in Greek, Latin, French and Italian, would shortly complete his education to correspond with the first two years of an American College, and intended to study English in this country. The principal of the College in New York to which the alien was destined states that once before a blind man came from abroad to that institution, with satisfactory results to all. The record shows, however, that this alien had not been accepted as a student by any approved school in this country. While acting as a teacher in an institution in Italy, he has been to some extent a public charge, as the money sent by his brother was not sufficient to meet his expense. He was given care and maintenance in return for his services as teacher.

While it is felt that the alien gave information to the American Consul and the agent of the Line indicating that he considered himself a student, the Line has not shown what steps, if any, were taken to avoid transporting him to this country in violation of law. Knowing that the conditions were unusual, it should have ascertained if he had been enrolled as a student in a school approved for aliens by the Secretary of Labor. This was not done. The re-
[fol. 466] sponsibility rests solely upon the Line, even if the American Consul did err in granting a non-quota immigration visa.

After most careful consideration of the record, it is felt that the Line has failed to show that it could not have ascertained, prior to the embarkation of the alien, and by the exercise of reasonable diligence, that he was not a bona-fide student, that he would be required to present a quota immigration visa in order to gain entry to this country legally, and that his physical defect would be considered as one affecting his ability to earn a living.

It is ruled, therefore, that the penalties as provided in Sections 16 and 26 of the Act of May 26, 1924, have been incurred, and you are directed to take appropriate action whereby the sum of $1,250 may be covered into the Treas-

ury as an immigration fine on account of this alien. The amount of passage is to be returned to the alien, he having been deported.

G. E. Tolman, Assistant Commissioner General.

Approved.

E. J. Henning, Assistant Secretary.

G. E. Tolman, Apr. 9, 1925, Mail and Files.

(Signed) E. J. Henning, Apr. 9, 1925, Mail and Files.

SSMc.
JWB.

[fol. 467] Recd. Bu. of Immigration Apr. 2, 1925, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, N. Y. H.

98930/625

(Stamp.) April 1, 1925.

Commissioner General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, notice of liability for fine and refund of passage money in the case of Salvatore Crimi ex SS "Conte Verde," January 19, 1925.

Bureau file No. 55435/875. Deported "Conte Rosso," Feb. 7, 1925. Letter protest enclosed.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division, per RW.

FS.
Encl. 11686.
(Stamp.)

[fol. 468] Notice of Liability for File on Account of Bringing Aliens to the United States in Excess of Quota, Section 16 of the "Immigration Act of 1924"

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, N. Y. H., N. Y.

98930/625

February 17, 1925.

To Lloyd Sabaudo, owner of the vessel Conte Verde, 1/19/25, 3 State Street, New York City (master, agent, owner, or consignee):

You are hereby notified that it appears that the alien whose name is shown herein is inadmissible under the provisions of the "Immigration Act of 1924," because said alien is an immigrant who does not have an unexpired immigration visa the visa in which specifies him as a non-quota immigrant; hence that a fine should be imposed under the provisions of Section 16 of the said act.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed thirty days from the date of this notice for that purpose, and the vessel upon which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed on her out-[fol. 469] ward-bound voyage upon condition that you deposit with the Collector of Customs at this port, prior to her sailing, as security for the payment of said fine, should it be imposed, the sum indicated below. Please submit evidence in duplicate.

Name of alien: Crimi, Salvatore, 34-M, single, Italian.

Amount required to be deposited: $1,000.

Details of violation: For bringing a quota (immigrant the visa in whose immigration visa specified him as being a Non-quota Immigrant). For passage refund see notice of physical defect.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division.

HCS.

Received the above notice Feb. 25, 1925, at — M.

Lloyd Sabaudo, per P. Ferrara.

Witness: N. Chafitz.

[fol. 470] Duplicate

U. S. Department of Labor, Immigration Service

Office of Port of ——

No. 98930/625

February 17, 1925.

To Lloyd Sabaudo, owner of the vessel Conte Verde, 1/19/25, 3 State Street, New York City (master, agent, owner, or consignee):

You are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 26 of the "Immigration Act of 1924," or Section 35 of the Immigration Act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed thirty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the Collector of Customs at this port, prior to her sailing, [fol. 471] the sum indicated below as security for the payment of the said fine should it be imposed.

Name of alien: Crimi, Salvatore, 34-M, single, Italian.

Passage refund: $217.58.

Amount required to be deposited: $250.

Defect or disability upon which fine is imposed: Totally Blind.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division.

HCS.

Received the above notice Feb. 25, 1925, at — M.
(Time:) ——.

Lloyd Sabaudo, per P. Ferrara.

Witness: N. Chafitz.

[fol. 472] (Letterhead of Lloyd Sabaudo)

File No. 98930/625

March 25, 1925.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: We are in receipt of your two notices of "Liability for Fine" dated February 17, 1925, and served on us February 25, 1925, in the case of Crimi Salvatore, who arrived on our SS. "Conte Verde" January 18, 1925.

A bond has been filed with the Collector of Customs to guarantee payment, should the fine be imposed, of the sum of $1,467.58 as follows:

Proposed fine for "Bringing a quota immigrant the visa in whose immigration visa specified him as being a non-quota immigrant"	$1,000.00
Proposed fine for total blindness	250.00
Proposed Refund of Passage	217.58
Total	$1,467.58

We desire to protest the imposition of any fine in this case, and beg leave to submit hereunder the following stated facts:

1. That in bringing the above named alien to the United States our Company did not violate any provision of the [fol. 473] Immigration Act of 1924.

2. That the record shows that the alien was in possession of a non-quota immigration visa issued by the American Consul in Naples January 7, 1925, which specified the alien as non-quota under Section 4 of Paragraph E of the Immigration Act of 1924, as a student.

3. That the record further shows that the alien was coming for the purpose of pursuing certain studies in the New York Institute for the Education of the Blind. Attached hereto is a letter addressed to our Company by the Honorable Homer M. Byington, American Consul General at Naples, Italy, together with copies of letters written by the Principal of the New York Institute for the Education

of the Blind addressed to the American Ambassador at Rome, Italy, together with a copy of the Ambassador's letter referring the case to the American Consul at Naples.

4. That as to the alien's certified condition, we beg to call the attention of the Honorable Secretary of Labor to the affidavit of the alien's brother which is on file with the record in this case and which the alien had in his possession before he embarked for the United States. This affidavit shows that the alien's brother is worth about $15,000 dol-
[fol. 474] lars and gives every guarantee that the alien would never have become a public charge. We desire to call the attention of the Department also to the fact that the father of the alien is a naturalized citizen of the United States, and that the alien had the naturalization certificate in his possession.

5. That the record of the hearing at Ellis Island shows that this alien had no intention to return to Italy upon completion of his studies. This is not what he told the American Consul when he swore to his application for the non-quota visa. The Consul fully advised him that his stay in the United States could never become permanent, and it was with this understanding that the visa was granted to him. When the alien applied for passage on our steamer, we were very careful to question him upon this point. He assured us that his stay in the United States would be temporary, and we accepted him in good faith honestly believing that he was a genuine student as specified in the law. If the alien changed his story upon arrival here we certainly could not prevent it.

6. That as to whether the alien was coming to a school approved by the Secretary of Labor, we desire to call the attention of the Department to the fact that our Company abroad is not in a position to know what schools have been
[fol. 475] approved by the Department of Labor. The Consul, however, has a list of these schools, and his instructions are to issue no visas to students who apply for the purpose of entering schools not approved by the Secretary of Labor. When this alien presented his visa, we had every reason to believe that so important an institution as the New York Institute for the Education of the Blind was on

the list of approved schools. The mere fact that the Consul had issued the visa should have been sufficient proof to us that the Institution was on the list of schools approved by the Secretary of Labor.

In conclusion, therefore, may we point out to the Hon. Secretary of Labor that under the law we are not liable to a fine if we did exercise due diligence and if we have acted in good faith. We believe that the facts and arguments herein presented are sufficient to convince the Honorable Secretary of Labor that we were duly diligent and have acted in good faith. We request, therefore, that no fine be assessed, and that the Collector of Customs be instructed to cancel this fine upon his records.

Thanking you for the kind consideration which you will undoubtedly give to this protest, we are,

Respectfully, Lloyd Sabaudo, Agency in New York.
M. Serrati, General Manager.

Enclosures.
DAC:EA.

[fol. 476] American Consular Service, American Consulate General

(Stamp.) Naples, Italy, January 27, 1925.

Lloyd Sabaudo, via Depretis, Naples.

GENTLEMEN: I have to acknowledge the receipt of your letter dated January 24, 1925, requesting me to inform you regarding the correspondence this office had received regarding Salvatore Crimi who sailed on your S. S. "Conte Verde" on the 7th inst.

In compliance with your request I beg to transmit herewith a copy of a letter from the American Ambassador at Rome, dated July 2, 1924, and a copy of a letter from Principal Edward M. Van Cleve, of the New York Institute for the Education of the Blind, dated June 9, 1924; also a copy of a letter from the Director of the Patronato Regina Margherita pro Ciechi, Istituto Paolo Colosimo, dated Aug. 1, 1924.

Very respectfully yours, Homer M. Byington, American Consul General.

File 811.11.
HMB.J.
Enclosures: As above.

[fol. 477] Patronato Regina Margherita pro Ciechi Istituto Paolo Colosimo

No. 7779

Napoli, 1 agosto, 1924.

Oggetto-Crimi Salvatore, Ill/mo Sig. Console Generale, per il Consolato Americano, via Cuma S. Lucia Citta:

Siamo in possesso della cortese sua lettera, e di quella in copia di Mr. V. Cleve e ringraziamo entrambi del cortese interessamento.

Circa notizie nei riguardi del giovane cieco Crimi possiamo dare le migliori sia per la condotta, carattere, serieta e studi. Il Crimi e ricoverato nel nostro Istituto dal 1912 e mai ha dato luogo a doverci dolere di lui.

E' un giovane dall'indole seria, studiosa. E' molto colto, ha fatto gli studi classici, e conosce bene la lingua italiana, latina, gfeca, francese. Nella italiana ha completato il corso di scienze e filosofia, e puo essere d'aiuto nello insegnamento, suona bene e correntemente il piano-forte per studio e metodo. E' anche stato addestrato nei lavori di piccoli cesti di lusso nei quali e anche provetto assai.

Nell'Insieme insomma e un giovane che fa piacere avere a contatto per la sua cultura e per la sua educazione.

Tanto per nostor dovere, e con rinnovata grata osservanza.

Patronato Regina Margherita pro Ciechi, Istituto Paolo Colosimo, Il Direttore. (Signed) Roseo Perichy.

[fol. 478] Copy

Embassy of the United States of America

Rome, July 2, 1924.

SIR: The Embassy has received a letter from Mr. Edward M. Van Cleve, Principal of the New York Institute for the Education of the Blind, in regard to a certain Mr. Salvatore Crimi who desires to come to the United States for the purpose of completing his studies, as well as for admission as a student teacher in the above mentioned Institute.

In view of the fact that Mr. Crimi is a present living in Naples, I am enclosing a copy of the letter for such action as you may think proper to take. You will note that Mr. Van Cleve is desirous of having some form of investigation and report made in regard to Mr. Crimi's general reputation.

I shall be pleased to transmit to Mr. Van Cleve any report that you may care to submit regarding Mr. Crimi.

I am, Sir,

Your obedient servant, (Signed) Henry P. Fletcher.

Homer M. Byington, Esq., American Consul General, Naples.

Enclosures.

[fol. 479] The Ninth Avenue Institute for the Education of the Blind, Ninth Avenue at Thirty-fourth St., New York City

Edward M. Van Cleve, Principal

June 9, 1924.

Hon. Richard Washburn Child, United States Embassy, Rome, Italy.

My Dear Sir: A short time ago Mr. Silvestre Crimi, a business man of Brooklyn, N. Y., called upon me to ask my co-operation in securing the admission of his brother, Salvatore Crimi, to the United States as a student. I appeal to you for information concerning the man and advice with respect to the proposal.

Salvatore Crimi is a graduate of the Ginasio and expects to be graduated from L'Iceo this month. The last two years of L'Iceo corresponds to the first two years of our college. This brother says: "He is proficient in Greek, Latin, French and Italian. He has also studied music and plays the piano. For the past year he has been studying English. At present he is living at the Instituto Paulo Colosimo, Vico San Domenico, Naples, Italy. Upon completing the L'Iceo he can no longer remain in this institute even though it is private. Therefore, other arrangements must be made."

The proposal is that this brother shall come to the United States for the purpose of carrying on his studies in the

[fol. 480] University but in order that he may perfect himself in English and prepare for the University he would apply for admission as a student-teacher in this school, that is, he would contribute his knowledge of languages as a teacher and would receive the opportunity of studying in our English classes. We have done this with satisfaction once before when a scholar of the Christiania School for the Blind, himself a blind man, came to New York under the auspices of the American-Scandinavian Foundation, spending a year studying in our classes and attending Columbia University. If Mr. Crimi is in all respects desirable we should not be averse to doing what we can to benefit him, since he is a blind man, and to make his way smoother in the field of further education, but we wish, of course, to be quite sure that he would be persona grata in our corps of teachers and I therefore appeal to you to have an investigation made and to give me a confidential report on this matter.

With assurances of highest respect,

Sincerely yours, Edward M. Van Cleve, Principal.

[fol. 481] Report of Execution of Department Decision

U. S. Department of Labor, Immigration Service

98930/625

Port of New York, Feb. 7, 1925.

Commissioner General of Immigration, Washington, D. C.

Sir: In accordance with Department decision No.* 55435/875 of 2/4, 1925, the alien Crimi Salvatore was deported via S. S. Conte Rosso sailing Feb. 7, 1925.

Respectfully, (Name:) H. R. Landis, (Title:) 2nd Asst. Commissioner.

Remarks: ——.

File: ——.

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*The above advice must cover but One Case as originally submitted to the Department.

[fol. 482] U. S. Department of Labor, Immigration Service

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., January 19, 1925—10:15 a. m.

Jackson 26

Present: Messrs. W. J. Zucker (Chmn.), Lapointe and Jackson; Interpreter, Andreaccio.

Names of Aliens: Crimi Salvatore, 34, male, single, Italy—Sou. Italian.

LPC. Improper visa. Insp. Scarinzi.

S I 2, SS Conte Verde, Lloyd Sabaudo Line.

Embarked at Naples, January 7, 1925.

Arrived in New York Harbor, January 18, 1925.

Delivered at Ellis Island January 19, 1925.

Med. Certificate #—, 1/18/25.—This is to certify that the above described person has this day been examined and is found to be affected with Totally Blind (No cause obtainable), which may affect ability to earn a living. In our opinion, the condition herein certified might have been detected by competent medical examination.

Surgeon: C. G. Douglas.

Born in Leonforte, Province of Catania, Italy, where I have no relatives; for the past 11 years I was in the in-[fol. 483] stitution for the blind in Naples, called the Istituto Paolo Colosimo; I have no relatives in any part of Italy.

I read the Braille system of raised letters.

My father, Francesco and brother, Silvestro in the U. S. paid my passage.

Student.

Never in the U. S.

Going to father and brother, 80 Stockston Street, Brooklyn, N. Y.

No money with me. I gave my brother Silvestro 850 Lire on the ship yesterday. Did not telegraph.

Coming to study and remain indefinitely.

(Shows Italian passport issued in Naples September 3, 1924, and non-quota immigration visa #2135, issued January 7, 1925, by American Consular Service in Naples under Section 4 (e), signed Harold D. Finley, (Consul).

Never debarred or deported from the U. S. or Canada.

Q. You have the right to have a relative or friend present at this hearing. Do you wish to avail yourself of that right?

A. No.

Q. How long have your father and brother been in the U. S.?

A. Eighteen years.

Q. Is your father a citizen of the U. S.?

A. Yes. (Presents certificate of naturalization #750443 in the name of Francesco Crimi, March 1, 1917, U. S. District Court, Brooklyn, indicating the holder to be 68 years of age.)

Q. Have you an affidavit from your father?

A. All my papers are there.

(Alien presents the following documents:)

[fol. 484] An affidavit executed July 12, 1923, by Silvestro Crimi, Kings County, New York, in behalf of his brother, Salvatore Crimi, in which affiant states he is residing at 80 Stockholm (Stockton?) Street, Brooklyn; that he is capable of taking care of his brother; and guarantees that the alien will not become a public charge; that the alien was blinded by an accident when 14 months old; the alien has been a teacher of music and professor of literature in Italy, in an institute for the blind; that the father of the alien is a citizen of the U. S.; that affiant has taken out first papers; is 36 years old; owns his residence valued at $12,000 and two lots valued at $2,000 and also a bank account.

Also presents:

A letter on the stationery of Columbia University, City of New York, University Extension, dated October 13, 1924, addressed to Mr. Silvestro Crimi, 80 Stockton Street, Brooklyn, signed D. A. Patterson, Assistant to the Director, reading:

"As soon as your brother arrived in New York I suggest that you and he visit this office, 301 Business Building, to consult with me about the best course for him to take in English. I believe that if we lose no time, we will have him speaking English fairly well by the time the Spring Sessions begin in February."

[fol. 485] Presents also:

A copy—not certified—of a letter dated June 9, 1924 on the stationery of the New York Institute for the Education of the Blind, 9th Avenue and 34th Street, New York City, addressed to Hon. Richard Washburn Childs, U. S. Embassy, Rome, Italy, from Edward M. Van Cleve, Principal, reading:

"A short time ago Mr. Silvestro Crimi, a business man of Brooklyn, called upon me to ask my co-operation in securing the admission of his brother, Salvatore Crimi, to the U. S. as a student. I appeal to you for information concerning the man and advice with respect to the proposal. Salvatore Crimi is a graduate of the Ginasio and expects to be graduated from the Liceo this month. The last two years of the Liceo correspond to the first two years of our colleges. His brother states:

"'He is proficient in Greek, Latin, French, and Italian. He has also studied music and plays the Piano. For the past year he has been studying English. At present he is living at the Istituto Paulo Colosimo, Vico San Domenico, Naples, Italy. Upon completing the Liceo, he cannot longer remain in this institute, even though it is private. Therefore other arrangements must be made.'"

[fol. 486] The proposal is that this brother shall come to the U. S. for the purpose of carrying on his studies in the university, but in order that he may perfect himself in English and prepare for the university, he would apply for admission as a student teacher in this school, that is contribute his knowledge of languages as a teacher and would receive the opportunity of studying in our English class. We have done this with satisfaction once before when a scholar of the Christiana School for the Blind, himself a blind man, came to New York under the auspices of the American Scandinavian Foundation, spent a year studying in our classes and attended Columbia University. If Mr. Crimi is in all respects desirable, we should not be averse to doing what we can to benefit him since he is a blind man * * * but we wish to be sure * * * that he would be persona grata in our corps of teachers, and I therefore appeal to you to have an investigation made and to give a confidential report on this matter.

Presents also:

Letter on the stationery of the New York Institute for the Education of the Blind, 9th Avenue and 34th Street, New York City, July 18, 1924, addressed to Mrs. Silvestro Crimi, 80 Stockton Street, Brooklyn, signed Edward M. Van Cleve, Principal, reading:

"As I promised I would do, I have taken up the problem of inviting your brother-in-law to serve as student teacher in this school, but I judge that it will be some months before [fol. 487] any action could be taken. I have not the information necessary to present to our board of managers, but I am trying to get it and I cannot be responsible for any delays which are made by other people. As far as I am concerned, I am working as fast as I can on this problem."

"It is to your credit that you wish to do something from your brother-in-law and I wish to help you in every way that I can. Whether or not this school could serve in the matter will have to be determined by our board of managers."

Presents also:

Letter on the stationery of the Royal Industrial School, Istituto Paolo Colosimo, dated Naples, September 23, 1924, in Italian reading as follows:

"It is hereby certified that Professor Crimi, son of the late Francesco, has from August 1, 1921 to this date occupied the position of a teacher in this institute. During these three years; he has discharged his duties with every zeal, giving proof of his great culture and teaching ability. His pupils have always been a large number and succeeded in being promoted."

"In witness whereof."

(Signed) Pericle Roseo, Director. E. Colosimo, President.

Bearing seal of the institute.

[fol. 488] Presents also:

Diploma indicating that he graduated from the Ginnassio, during the scholastic year 1919-1920, dated Naples June 24, 1924, and

Shows Certificate Signed by Mauro Serrano, Director, bearing seal of the Liceo Ginnassio Garabalda, Naples stat-

ing that the alien, Salvatore Crimi was promoted to the second year of the Classical Liceo in the second session of the year 1921-1922, dated at Naples November 18, 1923).

To the alien: Contents of the documents referred to are made known to you, and each of these documents is made part of the record. Do you understand (documents are read and translated to the alien)?

A. I understand.

Q. One of these documents indicate that your father is dead, is that correct?

A. That is a mistake.

Q. How is your father employed?

A. My father does not work; my brother supports him.

Q. Have you brothers or sisters in this country besides your brother Silvestro?

A. No.

Q. Have you any relatives or friends in Italy?

A. No.

Q. Have your brother and father made any attempts to bring you to this country before now?

A. Yes. It is several years since they have interested themselves in having me come here.

[fol. 489] Q. You were unable to obtain permission to enter this country?

A. I never took any steps in Italy to come here.

Q. How long have you been blind?

A. Since I was one year old.

Q. What caused your blindness?

A. Mother had great grief and the milk that she nursed me with was bad and caused my blindness.

Q. If the law permitted you to remain in this country permanently with your father and brother, would you do so?

A. Yes, that is my desire.

Q. Where you last residing in Italy?

A. In the institute where I was 11 years.

Q. Is that a charitable institution?

A. Yes.

Q. Did anyone pay for your care and maintenance in that school during the time you were there?

A. Yes, my brother has been sending to the institute 20 Lire a month for me ever since I have been there.

Q. That was not sufficient to cover cost of your maintenance and care, was it?

A. No*t*, but that was all that was asked.

Q. Was it the studies which you took at this institute which entitled you to the diploma which you present here?

A. Yes.

Q. The evidence indicates that you were teaching for a time in the institute (Istituto Paolo Colosimo). How long were you teaching there?

A. Three years; I taught elementary classes.

Q. The only compensation for that was your care and maintenance?

A. Yes.

Q. What do you expect to do in this country?

A. Continue my studies and teaching.

[fol. 490] Q. Where do you expect to study and where do you expect to teach?

A. At the institute for the blind, and I will have private classes.

Q. You present a document from the New York Institute for the Education of the Blind which indicate that some arrangements are in process of being made whereby you could enter there as a student teacher. However it does not appear that this is one of the schools which have been approved by the Department of Labor under the provisions of the Immigration Act of 1924, under which you seek exemption from the quota. What have you to say?

A. What can I say?

Q. Is it or is it not a fact that your primary purpose in coming to this country is to be with your relatives?

A. I have no relatives in Italy. I am coming to stay with father and brother and study at the same time.

Q. You have also presented a document from Columbia University concerning a course in English in preparation for the Spring Session beginning in February. What course is it intended for you to take up at Columbia University?

A. English course.

Q. Solely English?

A. English and literature.

Q. There is nothing to indicate that you have been accepted at Columbia University for any course. Have you any such information?

A. No; only that letter.

Q. Did the American Consul ask you if you had made preparation or had been enrolled at any institute in this country?

A. The director of the school where I was attending made all the arrangements.

[fol. 491] Q. What can you teach?

A. Italian, Latin, Greek, and French.

Q. Do you speak French fluently?

A. No, but I can read and translate it rapidly.

Q. Is your knowledge of Greek thorough or only slight?

A. I know the first elements of Greek, but I know Latin well.

Q. Have you any resources outside of those mentioned?

A. No.

Q. You will be entirely dependent upon your brother in this country?

A. Yes and on what I can earn as a teacher.

Q. How many dependents has your brother now?

A. He has two children, but his wife works; and he has my father.

Q. Do you know whether this New York Institute for the Education of the Blind has finally agreed to accept you as a student teacher?

A. Yes.

Q. How do you know it?

A. I know by the information contained in the letter which you have here, and the Director of the institute where I was in Italy told me I had been accepted.

Q. Do you speak any English?

A. A little; I had begun to study English.

Q. Do you expect eventually to attend Columbia University as soon as you can gain sufficient mastery of the English Language?

A. Yes.

Q. But you have not been accepted as a student at Columbia University yet, have you?

A. I understand that I would be accepted as a student.

Q. In what course?

A. English course.

Q. Do you know whether they have provisions for blind students in Columbia?

A. I do not.

[fol. 492] Q. You are totally blind; you have been in a charitable institution abroad; you claim to be coming here as a student. There is nothing to indicate that you have been enrolled or accepted as a student by any approved university or school. You state that your desire is to remain in this country; you state you have no relatives or friends in Italy; and it would seem that your real object in coming to this country is to be with your relatives. In view of your affliction, and in view of the fact that you have not fully qualified under the student regulations, and in view of all the evidence, have you any further statement to make or evidence to offer in support of your application to land

A. I have nothing more to say.

Witness, sworn by Insp. Zucker, testified through interpreter?

Q. What is your name?

A. Silvestro Crimi, 80 Stockton Street, Brooklyn, N. Y. I call for my brother, Salvatore.

Q. How long have you been in this country?

A. Nineteen years.

Q. Are you a citizen? (Shows Certificate of naturalization #1933091, in his name, dated June 21, 1923, U. S. District Court, Brooklyn.)

Q. Are you married?

A. Yes, I have wife and three children; the oldest child is 14 years.

Q. Is your wife living with you?

A. Yes.

Q. How many people are entirely dependent on you for support?

A. My wife and three children.

Q. And your father?

A. No.

[fol. 493] Q. How are you employed?

A. As cabinet maker, working for American Show Case Company, Greenpoint, earning $35 a week.

Q. How much money have you?

A. $1,000 in Dime Savings Bank, Fulton Street, Brooklyn; I have no book with me.

Q. Is the money in your name?

A. In my wife's name.

Q. Why did you not bring the book with you?
A. I forgot it.
Q. What property do you own?
A. A 5-family house at the address given.
Q. What is your equity in that property?
A. $8,000, and $1,300 equity in two lots which I own, one in Staten Island and one in Lodi, N. J. (Shows deed to property mentioned).
Q. What mortgage is on the house?
A. $3,500.
Q. Where is your father?
A. He is dead.
Q. Have you any brothers or sisters in this country?
A. No.
Q. Why is your brother coming to this country?
A. To study and teach.
Q. Where will he study?
A. In some university in New York City.
Q. Have you made arrangements with any university at which he is to study?
A. I took steps once, but received no further reply in the matter.
Q. Then as your brother stands now he is not enrolled or accepted as student in any institution. Is that correct?
A. Yes; he is not enrolled.
Q. Your brother states that he has been in a charitable institution abroad. Is that correct?
A. I don't know whether it was a charitable institution [fol. 494] or not, but I have been sending money for his private tuition.
Q. He states that you sent only 20 Lire a month?
A. I sent that 20 Lire a month for his maintenance.
Q. You understand that 20 Lire a month was not sufficient to support him?
A. At that time it was enough.
Q. Do you expect to support him here?
A. Yes.
Q. Will he live with you?
A. Yes.
Q. Is your wife willing to have him?
A. Yes.

Q. Will you assume the burden to see that he will not become a public charge?

A. Yes.

Q. Can he do anything to contribute to his own support?

A. He can teach.

Q. Where will he teach?

A. He is a teacher and he will teach at 2055 Grand Concourse, Bronx, N. Y.; I have a friend, Giovanni Maunuzzi, who conducts a Piano school at that place and I made arrangements with him to have my brother with him so that he can teach languages.

Q. Your brother does not seem to be proficient in any languages except Italian?

A. He knows something else.

Q. Did you attempt to make arrangements with Columbia University to have him enter there as a student?

A. I wrote Columbia University about it and received a reply stating that the matter would be arranged when my brother came here.

Q. Have they any course there for blind students?

A. Yes.

Q. What course have they?

A. I don't know.

[fol. 495] Q. Your brother has not complied with the provisions of the Immigration Act of 1924 so far as to qualify him as a student; furthermore he is physically defective. Have you any statement to make in his behalf in this regard and also to show why he is not a person likely to become a public charge?

A. From reply to my communication to Columbia University that nothing could be done until my brother came here, nothing else has been done to enroll him in any school. So far as my brother becoming a public charge, I offer as guarantee to the Government in that respect all I own; and furthermore my brother has not any relatives in Italy.

To the alien:

Q. Have you anything to say in regard to the testimony of your brother?

A. No.

Mr. Lapointe: I move to exclude the alien as one certified by the Medical officers at this station with a physical de-

fect which may affect his ability to earn a living, and as a person likely to become a public charge. I am of the opinion that this alien has not established a non-quota status under Section 4 (e) of the Immigration Act of 1924, and therefore move to exclude him as provided in Section 13 (a) (3) of said act, in that he is a quota immigrant and not a non-quota immigrant as specified in his immigration visa.

Mr. Jackson: Seconded.

Chairman: Unanimous.

[fol. 496] To the alien:

Q. How much did you pay for your passage?

A. 46 English Pounds.

Q. What is your address?

A. I have no address to go to in Italy except the institute where I stayed.

Q. You have been denied admission to the U. S. for these reasons (naming them). You have the right to appeal to the Hon. Secretary of Labor to decide whether you shall be admitted or debarred. If deported, it will be at the expense of the steamship company in the same class in which you arrived and the Secretary of Labor may order your passage money refunded to you at the address you give. Do you wish to appeal?

A. Yes.

Excluded.

—— ——, Secretary.

[fol. 497] N. Y. Form 228

Alien's Appeal from Decision of Board of Special Inquiry

U. S. Department of Labor, Immigration Service

Date: Jan. 19, 1925.

To the Honorable Secretary of Labor (through official channels):

I desire to appeal from the decision of the Board of Special Inquiry.

Salvatore (his X mark) Crimi.

Witness to signature (if alien signs by mark): Edw. J. Lapointe.

Ship—Conti Verde.
Date of arrival—Jan. 19, 1925.
S. I. No. 2.
Quota Immigrant.
Cause of exclusion—Ph. Def.—L. P. C. No Quota Im. Visa.
Minute references—Jackson, 26, Jan. 19, 1925.
Appeal Filed Jan. 19, 1925. J.

[fol. 498] In the Matter of the Application of SALVATORE CRIMI, an Italian Citizen, for Admission to the United States

STATE OF NEW YORK,
County of Kings, ss:

Sylvestre Crimi, being duly sworn deposes and says that he resides at #80 Stockholm Street, in the Borough of Brooklyn, New York City, and that he is making this application for the purpose of setting forth the fact that he is capable and competent to care for his brother, Salvatore Crimi, who wishes to enter the United States, and that deponent has sufficient property to grant that the said Salvatore Crimi will not become a public charge.

The brother of deponent, Salvatore Crimi, is now residing at the Casa dei Ciechi, San Domenico Maggiore, Naples, Italy. The said Salvatore Crimi, was thirty (30) years old in January, 1923, and was born in Leonforte, Provincia de Catania, Sicily, Italy.

This man was blinded by an accident when fourteen months old. The said Salvatore Crimi, however, is not a dependent, and would not become a burden upon this Government.

Said Salvatore Crimi has been well educated, and has been a teacher of music, and a professor of literature in Italian institutions for the blind, and is also giving instructions in basket work.

The father of Salvatore Crimi, and of your deponent, by the name of Francisco Crimi, came to America in 1906, and became an American citizen.

[fol. 499] Deponent has taken out his first papers. Deponent is aged thirty-six years, and owns the property known as premises #80 Stockholm Street, in the Borough of Brooklyn, County of Kings, City and State of New York.

The assessed valuation of this property is Twelve Thousand ($12,000) dollars. Deponent also owns one lot in Staten Island, Borough of Richmond, City and State of New York, valued at one thousand ($1,000) dollars. Deponent owns another lot in the State of New Jersey, the value of which is one thousand ($1,000) dollars. Deponent has, in addition to these, a bank account.

The applicant for admission to this country, Salvatore Crimi, bears a good reputation in Italy.

Deponent is a business man, and is competent to undertake the charge of his brother, Salvatore Crimi, and understands the responsibility toward the Government of the United States, which he is assuming in offering to bind himself as surety for the conduct of his brother in this country, and in guaranteeing that the said Salvatore Crimi will not become a public charge, on the United States Government.

Sylvestre Crimi.

Sworn to before me this 12th day of July, 1923. A. Trubiano, Notary Public, Kings County, No. 35. Registered Kings County No. 4034. New York County No. 118. New York Register's No. 4107. Queens County No. 1009. Commission expires March 30, 1924.

[fol. 500] State of New York,
County of Kings, ss:

I, William E. Kelly, Clerk of the County of Kings, and also Clerk of the Supreme Court for said County (said Court being a Court of Record), do hereby certify that A. Trubiano whose name is subscribed to the certificate of proof, acknowledgment or deposition of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment, a Notary Public of the State of New York, in and for said County of Kings, dwelling in said County, commissioned and sworn and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to said Certificate is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and

affixed the seal of the said County and Court, this 14th day of July, 1923.

Wm. E. Kelly, Clerk. (Seal.)

[fol. 501] United States Department of Labor

In the Matter of the Application of SALVATORE CRIMI, ex S. S. Conte Verde, for Admission to the United States, Port of New York

STATE OF NEW YORK,
County of Kings, ss:

Sylvester Crimi, being duly sworn deposes and says that he is over the age of 21 years, and resides at 80 Stockton Street, Brooklyn, N. Y. Deponent is the only brother of the immigrant Salvatore Crimi, who has made application to the Commissioner of Immigration, Port of New York, to be admitted to the United States, for a period of one year, for the purpose of studying. It is the intention of the immigrant to take graduate work at Columbia University, New York City, but the University Authorities would not permit any application to be made out, until they have conferred with the immigrant himself, as to the course it is possible for him to take.

The immigrant is entirely blind, having been so since fourteen months of age. He is well educated, being fully conversant with four different languages, and has been a student of philosophy, and author of several collections of [fol. 502] poems. He is now about thirty years of age. Some years ago his parents came to this Country, where they have both since died, and the immigrant has no living relatives whatsoever in Italy. He has for a long time desired to study in an American University, and take up the study of English, as well as Philosophy, but until the present time has been unable to do so.

Deponent is filing this affidavit to give assurance that Salvatore Crimi, although totally blind, will never become a public charge upon any community in the United States. Deponent is willing to put up a bond for $10,000, or even as high as $25,000, if such should be deemed necessary by the Immigration Authorities.

Deponent has worked in one concern for twenty years, ever since he has been in the United States, and is financially responsible, as he is head cabinet maker, in the

American Show Case Co., Inc., of 289-293 Greenpoint Avenue, Brooklyn, N. Y., and earns a good salary. Deponent owns his own house at 80 Stockton St., Brooklyn, N. Y., it is valued at $13,000, upon which there are mortgages aggregating $3,800, deponent also owns a lot in Staten Island, which is free and clear, valued at $1,000, and another lot in Lodi, N. J., which is free and clear, and valued at $500.00. Deponent earns $55 per week.

Deponent has a wife, Domenica Crimi, who is willing to assume the entire charge of the care of her brother-in-law, Salvatore Crimi. Deponent also has three children, all boys, of the age of fourteen, eleven and six years, who live with deponent and his wife.

[fol. 503] Deponent has three friends who are also willing to unite with deponent in giving any bonds, or other assurances, or guarantees desired by the Government, that Salvatore Crimi, will not become a public charge. The first one of these is Canto Catalanotte, who resides at 206 Montrose Avenue, Brooklyn, N. Y., and who owns two valuable pieces of property. The second one is Vito Favuzeo, residing at 859 Hart St., Brooklyn, N. Y., who is also the owner of real property, and Vincenzo Tardino, residing at Graham & Montrose Avenues, Brooklyn, N. Y., who owns his own house. Annexed hereto is a letter from deponent's employers, to show deponent's character.

Wherefore, your deponent respectfully prays that he may be allowed to file the necessary bonds to permit his brother, Salvatore Crimi, to be admitted to this Country for a period of one year for the purpose of study.

Silvestre Crimi.

Sworn to before me this 22nd day of January, 1925.
Theodore H. Doyle, Notary Public, Kings Co.
Term expires March 31, 1926.

[fol. 504] United States Department of Labor

In the Matter of the Application of Salvatore Crimi, ex S. S. Conte Verde, for Admission to the United States, Port of New York

State of New York,
County of Kings, ss:

Domenica Crimi, being duly sworn, deposes and says that she is over the age of 21 years, is an American citizen,

and the wife of Sylvester Crimi, and resides with her husband and three children at 80 Stockton Street, Brooklyn, N. Y. Deponent has read the affidavit of her husband annexed hereto, and knows the facts set forth therein to be true of her own knowledge.

Deponent is making this affidavit for the purpose of assuring the Government of the United States that her brother-in-law, Salvatore Crimi, if admitted to this Country, for the purpose of studying, for one year, will not become a public charge, although totally blind.

Deponent is perfectly willing to assume the entire charge of the care of said Salvatore Crimi, if admitted, and will be only too glad to welcome him into her home. The father and mother of deponent's husband, and Salvatore Crimi, came to this country several years ago, but both have died, [fol. 505] and Salvatore Crimi, at the present time has no living relatives in Italy.

Deponent knows that he has been anxious to come to this Country for a number of years to study in an American University, but it is only within the last year or two, he has been enabled to do so.

Deponent's husband owns the house in which he and deponent live, and which is an income bearing piece of property, being valued at $13,000.00, with mortgages aggregating $3,800.00, which are being paid off by instalments. The income from this property consists of rentals, as this is a six family house, there being six apartments therein. Deponent and her husband, and three small children occupy the ground floor of said building. Deponent will be only too glad to be permitted to care for the said Salvatore Crimi, and joins with her husband in the prayer that the said Salvatore Crimi may be allowed to enter this Country, under bond for one year, for the purpose of study.

Domenica Crimi.

Sworn to before me this 22nd day of January, 1925.
Theodore H. Doyle, Notary Public, Kings Co.
Term expires March 31, 1926.

[fol. 506] Columbia University, in the City of New York

Office of University Admissions

January 13, 1925.

Mr. S. Crimi, 80 Stockton Street, Brooklyn, N. Y.

DEAR SIR: We are in receipt of your letter but before sending the blank of which you speak we should be glad to know where your brother has studied previously and what Department of Columbia University he desires to enter.

Very truly yours, Adam Leroy Jones, Director.

(Envelope)

(Cancelled Stamp.)

Columbia University, in the City of New York. Office of the Director of University Admissions.

Mr. S. Crimi,
80 Stockton Street,
Brooklyn, N. Y.

[fol. 507] (Letterhead of American Show Case Co., Inc.)

Brooklyn, N. Y., Jan. 20, 1925.

To whom it may concern:

This is to certify that Sylvester Crimi has been in our employ as cabinet maker for approximately 20 years and we have found him to be strictly honest and reliable.

He has advanced himself in the course of time that he has been employed by us so that at present he is head cabinet maker in our shop, earning good wages and has steady work being given preference over any other man on account of his steadiness and ability.

We also know from intimate knowledge that he owns several pieces of property and is also a good American Citizen.

We are pleased to recommend him to any concern as we are sure that any statements which he may make will be

true and any obligation which he may incur, he is in a position morally and financialy to live up to.

Respectfully yours, American Show Case Co., Inc.
Louis Robbins, Pres.

WW:LP.

[fol. 508] PLAINTIFF'S EXHIBIT No. 16

55435/104

November 24, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letters of November 8th and November 20th, No. 98918/424, relative to proposed fine against the S.S. Conte Verde, arriving on July 7, 1924, for bringing to the United States the alien Domenido Costigliolo, who was certified as being afflicted with sycosis barbae, a loathsome, contagious disease which, in the opinion of the examining Public Health Surgeons, might have been detected by means of a competent medical examination at the foreign port of embarkation.

The Line protests against the imposition of a fine, on the ground that the alien was examined prior to being accepted for passage and no trace of the disease found. It assumes that it must have arisen during the voyage. It calls attention to the delay in rendering the official certificate as indicating that the disease, even on arrival, could not be detected readily, and also says that the alien was not coming to reside in this country but to become a member of the crew of a vessel which was to depart foreign in the near future.

This matter appears, to the Bureau, as being a medical one entirely and in view of the official medical certificate and the fact that the alien was deported thereunder, it is felt that the penalty as provided in Section 26 of the Act of May 26, 1924, should be imposed, no sufficient proof hav-
[fol. 509] ing been submitted to show that the disease did not exist at the time or embarkation or that it could not then have been detected.

You are directed, therefore, to take appropriate action whereby the sum of $1000, now on deposit on account of

said alien, may be covered into the Treasury as an immigration fine. You report that no passage money was deposited. The alien was deported.

G. E. Tolman, Acting Commissioner General.

Approved.

Robe Carl White, Second Assistant Secretary.

HMc.
JWB.

(Signed) —— ——, Nov. 25, 1924, Mail and Files.

(Signed) Robe Carl White, Nov. 25, 1924, Mail and Files.

[fol. 510] Recd. Bu. of Immigration, Nov. 21, 1924, Mail and Files.

Address answers to "Commissioner of Immigration" and refer to Number —.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

Nov. 20, 1924.

Commissioner General of Immigration, Washington, D. C.:

This is in response to Bureau letter of November 15th, No. 55435/104, relative to proposed fine in the case of Domenido Costigliolo ex S.S. "Conte Verde" July 7, 1924. It is noted that the Bureau wishes to be informed under what provision of law fine is proposed in the sum of $1000. as the records show that the alien is a bona fide seaman.

While it appears that this man is by occupation a bona fide seaman and has followed this calling since 1911, the record of hearing before the Board of Special Inquiry shows that he arrived here on the S.S. "Conte Verde" July 7th as a steerage passenger and that his passage [fol. 511] was paid by his employer, Carlo Pitaluca. The record further shows that he was coming to the United States for the purpose of joining the crew of the S.S. "Pennsylvania" which vessel was in this port and in readiness to sail to Italy. He did not come as a member of the crew of the S.S. "Conte Verde", but as previously stated was manifested as a steerage passenger. He was

found to be afflicted with a loathsome contagious disease and the medical officers here certified that his condition might have been detected by competent medical examination at the foreign port of embarkation.

I recommend that the fine be imposed in accordance with the terms of Section 26 of the Immigration Act of 1924.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division.

WWB:JK:
(Stamp.)

[fol. 512] 55435/104

November 15, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of November 8th, No. 98918/424, relative to proposed fine in the case of Domenido Costigliolo, ex S.S. Conte Verde, July 7, 1924, and wishes to be informed under what provision of law the fine is proposed in the sum of $1,000 as the record shows that the alien is a bona fide seaman.

—— ——, Commissioner General.

HMc.
JWB.
Nov. 17, 1924, Mail and Files.

[fol. 513] Recd. Bu. of Immigration Nov. 10, 1924, Mail and Files.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

File No. (98918/424)

November 8th/1924.

Commissioner-General of Immigration, Washington, D. C.:

As directed in Bureau letter No. 55195/536, of April 9, 1923, there is enclosed herewith, without recommendation, notice of liability for fine and refund of passage money in

the case of Domenido Costigliolo ex S. S. "Conte Verde", July 7th/1924.

Bureau file No. No Bureau number—Letter of protest attached. Deported S. S. "Conte Rosso", Aug. 2/1924.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division.

Encl.-29829.
MRM
(Stamp.)

[fol. 514] Prepare in Triplicate.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Port of Ellis Island, N. Y. H.

98918/424

September 23, 1924.

To Lloyd Sabaudo, agents of the Vessel "Conte Verde" (master, agent, owner or consignee), 3 State St., New York City, July 7, 1924:

You are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 26 of the "Immigration Act of 1924", or Section 35 of the Immigration Act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed thirty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the collector of customs at this port, prior to [fol. 515] her sailing, the sum indicated below as security for the payment of the said fine should it be imposed.

Name of alien: Costigliolo, Domenico, 30-m-single.
Amount required to be deposited: $1,000.

(Member of Crew—No Passage Refund.)
Defect or disability upon which fine is proposed: Sycosis barbae.
For the Commissioner:
W. W. Brown, Inspector in Charge, Law Division, per R. W.

Received the above notice Sep. 16, 1924, at 2:30 — M.
Lloyd Sabaudo, per P. Ferrara.

Witness: Samuel Young.

(Letterhead of Lloyd Sabaudo)

File No. 98918/424

October 22nd, 1924.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

Sir: We are in receipt of your "Notice of Liability for Fine" dated September 23rd, 1924, and served on us Sep- [fol. 516] tember 26th, 1924, in the case of Costigliolo Domenico, who arrived on our S. S. Conte Verde, July 7th, 1924.

A bond has been filed with the Collector of Customs to guarantee payment, should the fine be imposed, of the sum of $1,000.00 for Sycosis Barbae.

We desire to protest the imposition of any fine in this case, and beg leave to submit herewith the following stated facts:

1. That in bringing the above named alien to the United States our Company did not intentionally violate the law. We employ competent medical examiners of long practice and experience, and the reason the condition herein certified was not detected is that the disease did not exist prior to embarkation, and must have developed during the voyage.

2. That the record shows that the U. S. Public Health surgeons on Ellis Island have certified that in their opinion "the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation". Our surgeons, however, insist that this alien

did not have the disease prior to embarkation, and that it must have developed during the voyage.

3. That the record shows further that this alien arrived in the United States on July 5th, 1924, and that he was not [fol. 517] certified until July 21st, 1924. In other words, the alien had to be held in the Ellis Island hospital under observation for sixteen days, before the surgeons could certify that the alien was afflicted with the disease. Notwithstanding this fact, your surgeons certify that in their opinion "the condition herein certified might have been detected by a competent medical examination at the foreign port of embarkation". It seems to us that the facts clearly contradict the statement of the surgeons that the disease could have been detected prior to embarkation.

4. That we desire to point out also that your surgeons have certified that the disease "might" have been detected. They were not positive that it could have been detected, otherwise they would have said that the disease could have been detected.

5. That "Barber's Itch" is caused by infection after shaving with an infected razor. The alien could have shaved himself on board the steamer after departure, and the rash could, therefore, have appeared during the voyage.

6. That the above named alien is a seaman, and has followed the sea for the past thirteen years. He was not coming here for the purpose of establishing a residence, but to join the S. S. "Pennsylvania" which had recently been pur- [fol. 518] chased by his employers and which was to be delivered immediately to their owners in Italy.

In conclusion, may we remind the Honorable Secretary of Labor that under the law we are not subject to a fine if we can prove to his satisfaction that our Company did exercise due diligence and that the inadmissibility of the alien could not be for-seen prior to embarkation. We believe that the facts and arguments herein presented should convince the Honorable Secretary of Labor that our Company was duly diligent in this case. We request, therefore,

that no fine be assessed, and that the Collector of Customs be instructed to cancel this fine upon his records.

Respectfully, Lloyd Sabaudo, Agency in New York.
M. Serrati, General Manager.

DAC: EA.

[fol. 519] U. S. Department of Labor, Immigration Service

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., July 23, 1924—1:05 p. m.

SN 148

Present: Messrs. Parbury (Chm.), Wood and Bruno; Int. Andreaccio.

Names of Aliens: Costigliolo Domenico, 30, male, single, Italy, North—Italian.

L. C. D.; Insp. Ryan.

SI 12, S. S. Conte Verdi, July 7, 1924, steerage.

From Genoa, June 24th.

Going to Bklyn. to join the crew of the S. S. Pennsylvania, to bring the steamship back to Italy.

Med. Cert. 3319, July 21, 1924—This is to certify that the above described person has this day been examined and is found to be afflicted with Sycosis barbae, a loathsome contagious disease, which is not easily curable. In our opinion, the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation.—Drs. Waugh and Weldon.

[fol. 520] Alien, sworn, testified through interpretor:

Native of Genoa, Italy, where I have a brother Mario, in good health.

Read.

Carlo Pitaluca, my employer paid my passage.

Marine Cook.

Never in the U. S. before.

Going to Bklyn. as a member of the crew to take the ship back to Italy.

No money; did not telegraph.

(Shows seaman's book with the Italian Merchant Marine, visaed by the American Consul at Genoa June 24, 1924,

#1959, notation: place of birth, Italy, alien visiting temporarily for business.)

Never debarred or deported from the U. S. or Canada.

By Mr. Parbury:

Q. Have you any intention of remaining in the U. S.?

A. No.

Q. How long have you been a seaman?

A. Since 1911.

Q. What steamship are you coming here to take back to Italy?

A. The DeSoto but I believe the name will be changed to Pennsylvania, lying in Brooklyn; I came here with four officers and 21 other members of the crew.

Q. Do you know when it is going to sail?

A. No.

Q. The medical officers at this station certify that you have a loathsome contagious disease, how long have you had it?

A. About a year but I am very much improved now.

[fol. 521] Q. Were you not examined before embarkation by the officers of the vessel?

A. Yes I was examined and told that I was all right.

Mr. Bruno: I move to exclude this alien as a person suffering from a loathsome contagious disease.

Mr. Wood: Seconded.

Mr. Parbury: Unanimous.

To Alien:

Q. You have been refused admission to the United States for the following reasons (naming them). You will be deported at the expense of the steamship company which brought you, and you may not return to this country within one year of the date of your deportation without the prior consent of the Secretary of Labor. Do you understand?

A. Yes.

Q. What did your passage cost?

A. 1950 lire plus headtax.

Q. You may be refunded the money paid for your passage; in that event, to whom and where do you wish it sent?

A. To me, at Via Cassala No. 7, Interno No. 9, Genova, Italy.

S. Neuberger, Secretary.

[fol. 522] PLAINTIFF'S EXHIBIT No. 2 (2/19/31)

Address Official Communications to the Secretary of State, Washington, D. C.

[SEAL.]

In reply refer to Vi 811.11102-Cusumano, Gaspare M.

Department of State, Washington

Oct. 6, 1930.

Mr. Gaspare M. Cusumano, 44 Whitehall Street, New York, New York.

SIR: In reply to your letter of September 29, 1930, you are informed that the Immigration Act of 1924 became effective on July 1, 1924. On and after that date aliens desiring to come to the United States were required to be in possession of suitable visas issued by American consular officers abroad under the provisions of that Act.

Section 24 of the Immigration Act of 1924 reads as follows:

"The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this Act; but all such rules and regulations, in so far as they relate to the administration of this Act by consular officers, shall be pre-
[fol. 523] scribed by the Secretary of State on the recommendation of the Secretary of Labor."

In accordance with this provision a circular instruction was issued to the American diplomatic and consular officers and subsequently the booklet entitled "Admission of Aliens into the United States", No. 926, General Instruction Consular, Diplomatic Serial No. 273, dated September 30, 1925, was compiled, and revised under date of March 23, 1929. Paragraphs 162 to 165, 192 to 194 and 202 to 205, inclusive, to which you refer were not changed when the revised edition was printed.

Before the issuance of General Instruction Consular No. 926, referred to above, consular officers were guided in the granting or refusal of visas under the Immigration Act of 1924 by the Department's mimeographed circular instruction of June 12, 1924, to which you refer. There

are no copies of this document available. Moreover, it was considered confidential.

Section 2 (f) of the Immigration Act of 1924, provides that no immigration visa shall be issued to an immigrant if the consular officer knows or has reason to believe that the immigrant is inadmissible to the United States under the Immigration laws. Prior to June 30, 1924, an alien arriving at a port of entry to this country was not admitted by the appropriate immigration officials if he were found to be among those classes specified by the Immigration Act of February 5, 1917, as being inadmissible to the United States. The Department of Labor has issued [fol. 524] from time to time a pamphlet relative to its rules and regulations for the enforcement of the Act of February 5, 1917, and it is suggested that if you so desire you communicate with that Department relative to your desire to obtain a copy thereof.

Very truly yours, Eliot B. Coulter, Eliot B. Coulter, Acting Chief, Visa Office.

Excerpts from the Regulations of the United States Public Health Service Governing the Medical Inspection of Aliens

Order of Promulgation

Treasury Department, Bureau of the Public Health Service, Washington

August 1, 1917.

In accordance with the provisions of section 16 of the act of February 5, 1917, the following regulations governing the medical inspection of aliens are hereby issued for the guidance of medical officers of the Public Health Service detailed for that purpose.

[fol. 525] The instructions for the medical inspection of aliens, issued January 18, 1910, are hereby rescinded.

Rupert Blue, Surgeon General.

Approved.

Byron R. Newton, Acting Secretary of the Treasury.

2. It is the function of the proper immigration officers to determine whether an alien may belong to any one or

more than one of the excluded classes enumerated in the foregoing section. An excluding decision to be legally valid must be reached by authorized immigration officials after the observance of a prescribed course of procedure, having due regard for various provisos and exceptions to be found in the law and for various privileges accorded to aliens applying for admission. The proceedings in each case must be made a matter of permanent record which must show that the prescribed procedure has been observed, that all admissible evidence has been duly considered, and that the excluding decision has been properly rendered. [Act Feb. 5, 1917.]

3. A part of the admissible evidence which the immigration officials may have to consider in any case is that which may be submitted by officers of the United States Public Health Service. The evidence which medical officers of the Public Health Service are required by law to furnish in [fol. 526] this connection is of two separate and distinct kinds, viz, evidence to be rendered in the form of certification as to findings of facts and testimony in the form of professional opinions.

4. The term "medical certificate" as used in the immigration law is to be regarded as a certification of facts which have been demonstrated from appropriate medical examinations. A medical certificate so issued has the legal value of a document signed by a public officer which is by law made evidence of the truth stated for the purposes of the administration of the immigration law. Such a certificate is made binding on the action of the immigration officials in the following language: "The decision (adverse) of a board of special inquiry shall be based upon the certificate of the examining medical officer and except as provided in section twenty-one hereof, shall be final as to the rejection of aliens affected with tuberculosis in any form or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under section three of this act." [Sec. 17, act Feb. 5, 1917.]

5. Under section 16 and other provisions of the immigration act, medical officers are required to furnish to the proper immigration officials all medical information and

professional opinions which may be necessary to enable them intelligently to consider individual cases. Statements issued by medical officers (no matter how necessary for [fol. 527] the above purposes and whether termed medical certificates or not) which do not possess the inherent character of a certificate as described by paragraph 4 do not and can not bind the action of the immigration officials in a case. For example: The fact that an alien has a valvular disease of the heart is a proper subject for certification. A medical opinion that this condition will affect his ability to earn a living may be valuable information for a board of special inquiry, but it is a statement which lacks the inherent character of a medical certificate. It is an assertion which is based on something more than a medical examination. It rests on the consideration of evidence other than that obtainable from a medical examination alone and on evidence the consideration of which has not been delegated to the medical officers. Consequently the board of special inquiry may, after the "consideration of all the evidence in the case," decide that the alien belongs to one of the excluded classes, to wit, that of an alien having a defect which may affect his ability to earn a living, and the board of special inquiry may base an excluding decision on the medical certificate; but in such event the record must show that the board itself has found that the alien had a defect which may affect his ability to earn a living, or, after consideration of all evidence, the board may decide that the alien is not excludable as an alien having "a defect which may affect the ability of such alien to earn a living" within the meaning of that [fol. 528] phrase as used in the law, and admit the alien to the country.

The question whether the alien has such a physical defect or disease is purely medical and is therefore for the medical officer to determine; the question of the effect of such a disease or defect on the alien's earning capacity is a practical one, and therefore for the immigration officer to determine, although such immigration officer may desire, and having obtained, may consider an expression of opinion by the medical officer on the practical phase of the matter. It is to be observed, however, that in cases of mental defects it is the existence of the defect (a medical question) and not the aspect of its possible effect upon

earning capacity which renders the alien excludable. Therefore it is a certificate, not an expression of opinion, which the medical officer must render and the immigration officer follow in such mental cases.

6. The determination by the immigration officers of the admissibility of aliens is a formal legal proceeding which may be and sometimes is subject to investigation and review by the courts. For this reason medical officers should always observe the distinction between medical certificates and statements of professional opinion. It is preferable that a medical certificate and a professional opinion should be made the subject of separate communications, but when each forms a part of the same official communication, the distinction between the authoritative findings of medical [fol. 529] facts and the expressions of professisonal opinions should always be made apparent.

7. In addition to the duties which they are called upon specifically to perform by the immigration laws and regulations relating thereto as officers of the United States Government under obligations to secure the observance of all its laws, officers of the Public Health Service are to regard it as a duty to submit in an appropriate manner to the proper immigration officials any information which may come to their knowledge which may seem calculated to assist in the enforcement of the immigration laws.

Duties of Medical Officers under the Act of February 5, 1917

12. To submit such opinions as may be necessary to assist the Secretary of Labor in determining whether certain penalties shall be imposed in connection with the certification for certain classes of physical and mental diseases and defects in cases of arriving aliens. [Secs. 9 and 35, act Feb. 5, 1917.]

Medical Examination

Conduct of Medical Examinations

37. The medical examiner should endeavor—

(1) To segregate from those presented for examination the aliens with diseases or defects and those suspected of

being so affected, so that those free from disease, defect, or abnormality can proceed without unnecessary delay.

(2) To conduct a systematic inquiry as to the signs and [fol. 530] symptoms primarily observed in the persons turned aside, in order to make a diagnosis and proper certification. Medical officers should make use of all diagnostic resources that may be necessary to reach a correct determination.

38. The alien concerned may be detained for any period of observation necessary to complete the diagnosis. Hospital accommodations should be provided in appropriate cases.

Medical Examination

54. Whenever an alien has been brought to the attention of the medical officers for the purpose of a medical examination, whether by reason of information furnished by ship's surgeons or passenger manifests, or by reason of being turned aside by a medical officer during the inspection procedure, or because of having been returned by an immigration officer as suspicious, such alien should be examined not only with reference to the condition which may originally have attracted attention or aroused suspicion but with reference to the existence of any other possible physical or mental disease or defect.

58. Before adopting as a routine measure any laboratory diagnostic procedure which may cause annoyance and delay to regular passenger travel, due regard should be given to its practical value in diagnosis. Also before employing any such procedure consideration must be given to the relative importance for the practical purposes of the immigration law, of the disease that the procedure is designed to detect.

[fol. 531] 81. Officers are to regard the term "competent medical examination" as used in the law and these regulations to mean a medical examination of substantially the same character and scope as that maintained by the Public Health Service at the port of arrival.

42. The purpose of the inspection procedure is not to establish a diagnosis, but to detect abnormalities of any description. The following is to be regarded as a model in making a medical inspection:

The medical officer stands with his back toward a window. This position affords good light for the inspection. The immigrant to be inspected comes to standstill immediately in front of the medical officer.

(a) The officer first questions the alien as to his age, destination, etc., or propounds to him one or two simple "sums" in addition. Immediately afterwards he carefully observes the alien's eyes, tests his pupillary light reflex, and everts the upper eyelids. He then makes an inspection of the alien's scalp, face, neck, and hands. The alien then turns at a right angle, and as he proceeds the medical officer observes the posterior aspect of his scalp as well as his posture and gait.

(b) The questions and "sums" in addition which are propounded enable the officer to obtain an idea of the immigrant's attention, alertness, reasoning ability, and general mental reaction. Not infrequently positive signs of mental disease are obtained by bringing the alien to a standstill [fol. 532] and giving him these brief mental tests.

(c) The eyes are carefully observed in order to detect irregularities of these organs as well as refractive errors. Corneal opacities, keratitis, opacities of the lens, nystagmus, squint, bulging eye, the wearing of glasses, an effort to see clearly on the part of the alien, clumsiness, uncertainty of gait are sufficient signs, collectively or severally, to require that the immigrant be put aside for a thorough eye examination.

(d) The pupillary light reflex is tested for the purpose of apprehending tabetics, paretics, and other parasyphilitic persons. In addition to obtaining the light reflex, the equality and irregularity of the pupils may be observed at the same time.

(e) The epper eylids are everted in a search for conjunctivitis and trachoma. A glove buttoner will be found very useful for this purpose.

(f) In observing the scalp, tumors and depressions may be detected as well as signs of favus, ringworm, and psoriasis.

(g) A careful observation of the face, as to its color, expression, nourishment, and abnormal signs often offers a

clue to the general physical or mental condition of the immigrant. Anemia, due to many causes, as well as lung, cardiac, kidney, and mental disorders are often suspected from the facial signs obtained at the primary inspection.

[fol. 533] (h) If the alien's neck can not be plainly seen by the examiner the collar should be unbuttoned in order to detect goiter, tumor, pulsating vessels, and other abnormalities.

(i) The hands must be carefully inspected in order that atrophies, contractures, athetoid movements, deformities, missing members, clubbed fingers, diseased or incurved nails will not escape notice.

(j) At this stage of the inspection, it is probable that elevation of temperature if it exists will have been detected, and a general idea of the alien's age, size, weight, and nutrition will have been obtained.

(k) As the alien walks away from the examiner irregularities in movement, due to ankylosed joints or shortened and deformed extremities, will be noticed. Likewise tabetic, steppage, hemiplegic, and spastic gaits, caused by disorders of the nervous system, will be observed. Children in arms should be carefully inspected and if old enough required to walk.

(l) Any abnormality observed in the above-detailed inspection will be sufficient cause to have the alien put aside for a more thorough examination. The liability of organic disease to develop and become of serious import after the age of 45 should always be kept in mind while making this inspection. To facilitate later identification in the medical examination rooms it may be useful to make on the alien's coat some mark with chalk indicative of the abnormality which attracted attention during inspection.

[fol. 534] IN UNITED STATES DISTRICT COURT

STIPULATION AND ORDER SETTLING BILL OF EXCEPTIONS

It is hereby stipulated and agreed that the foregoing is all the testimony and exhibits material to the hearing of the

appeal herein, and that the same may be settled and ordered on file as the bill of exceptions herein.

Dated, July —, 1931.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Plaintiff. George Z. Medalie, U. S. Attorney, Attorney for Defendant.

So ordered.

Robert P. Patterson, U. S. D. J.

Dated, July —, 1931.

[fol. 535] In United States District Court, Southern District of New York

L. 45117

Lloyd Sabaudo Societa Anonima per Azioni, Plaintiff,

against

Philip Elting, Collector of Customs of the Port of New York, Defendant

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Plaintiff (Delbert M. Tibbetts, of Counsel).

Charles H. Tuttle, Attorney for Defendant (Walter H. Schulman, of Counsel).

Opinion, Patterson, D. J.

Patterson, D. J.:

The complaint contains fifteen causes of action, to recover fifteen fines paid under protest by the plaintiff, a steamship company, to the defendant, collector of customs of the port of New York. The fines were imposed by the Secretary of Labor, at various times from 1923 to 1926, under the provisions of section 145, Title 8, U. S. C. A. The first two sentences of this section read as follows:

"It shall be unlawful for any person, including any [fol. 536] transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any ves-

sel, to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical [fol. 537] defect of a nature which may affect his ability to earn a living, as contemplated in section 136 of this title, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $250, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed."

It will be seen that the first sentence empowers the Secretary to exact a fine of $1,000 for transporting aliens suffer-

ing from enumerated mental and physical diseases, and that the second sentence authorizes him to impose a fine of $250 for transporting aliens afflicted with any other mental defect or physical defect sufficient to affect their ability to earn a living. The fines shall be assessed, however, only in cases where it appears to the Secretary's satisfaction that the ailment or disability might have been detected by a competent examination at the time of embarkation.

[fol. 538] In all fifteen cases, the plaintiff had transported from Italy to the United States aliens who were found upon arrival here to be inadmissible because of disease or defects. In each instance, the physicians who examined the alien at Ellis Island rendered a written opinion that the existence of the disease or disability might have been detected by a competent medical examination at the time of embarkation in Italy. The plaintiff was notified by the Secretary of Labor that a fine was under consideration and was given a period of sixty days within which to have a hearing in the matter. The plaintiff protested against the imposition of a fine, stating generally in letters, and in one or two cases submitting affidavits, that thorough medical examinations of all aliens seeking passage on its boats were conducted by competent doctors at the port of embarkation. Fines were nevertheless imposed, the Secretary of Labor declaring that while he had given consideration to the matters presented to him by the plaintiff, such matters did not overcome the force of the opinion of the examining physicians at Ellis Island.

At the trial, the plaintiff introduced testimony tending to show in considerable detail that all prospective passengers were put through at least two medical examinations in Italy, and that the doctors who conducted the examinations were skilled in their profession and were diligent in carrying out the examinations. This testimony was objected to but was admitted, subject to motion to strike out. The plaintiff also offered evidence tending to show that the de-

[fol. 539] cisions in these and similar fine cases had been generally unfavorable to the steamship companies. This evidence was also admitted, subject to being stricken out on the defendant's motion. By stipulation the case was tried before a jury of one.

In seeking recovery of the fines paid, the plaintiff has advanced three arguments that apply to all fifteen causes of

action. One ground of attack is that section 145 is unconstitutional. Another ground is that the Secretary's power to impose a fine exists only in cases where in fact no competent medical examination was enforced by the steamship company. A third is that the Secretary's action in all fifteen cases was arbitrary and unfair. In addition to these points common to all fifteen fines, there are additional contentions against the validity of several of the fines.

1. Section 145 is from the 1917 act, the change made in 1924 having been an increase in the amount of the fines. An earlier act, imposing a fine of $100 in cases of aliens suffering from loathsome or dangerous contagious diseases, was construed and held constitutional in Oceanic Steam Navigation Co. v. Stranahan, 214 U. S. 320. The plaintiff assails the constitutionality of the present section, pointing out that the fine in cases of loathsome or dangerous contagious diseases is ten times as large as the fine sustained in the Stranahan case, that a fine of $250 for physical or mental defectives has now been added, and that both fines include also the amount of the passage money, which was not a part of the fine under the earlier act. It is claimed [fol. 540] that fines in these amounts are excessive, especially in view of the fact that they are leviable upon the decision of an officer of the executive branch without judicial action of any sort, and it is said that the plaintiff's property has thus been taken without due process of law. The power of Congress to place upon steamship companies the duty of subjecting prospective passengers to a competent medical examination and of rejecting those who fail to pass the test cannot be questioned. So also as to the imposition of a fine for failure to perform this duty, and as to delegating to the Secretary of Labor the right to decide in particular cases whether the duty has been performed or neglected. These propositions were settled by the Stranahan case. The policy behind this statute is plain. In order to strengthen the barriers against the entrance of diseased and defective foreigners, many of whom were slipping past the examiners at our ports, Congress saw fit to require the steamship companies to conduct examinations on the other side. The desirability of preventing the spread of contagion during the

voyage probably also played a part. The requirement of refund of the passage money must have been due to an appreciation of the hardship on the rejected alien who should never have been brought here, as well as to a sense of increasing the amount of the punitive fine. The only point not settled by the Stranahan case is the reasonableness of the penalties under the present statute. It seems clear to me that the fairness of the scale of fines is a legislative [fol. 541] rather than a judicial matter, and that protests on the score of excessiveness should be addressed to Congress and not to the courts. It certainly cannot be said that the fines now prescribed are outrageously high and manifestly out of line with the prohibited offense, and until that point is reached the statute is unassailable on the constitutional side. Cf. Navigazione Libera Triestina v. United States, 36 Fed. 2nd, 631, where a fine of $1,000 under another section of the 1924 act was upheld.

2. The plaintiff further contends that the jurisdiction of the Secretary of Labor to impose fines exists only where no competent examinations on the other side have been held, and that the evidence shown to the court establishes that competent examinations were held. In other words, the contention is that if the actual fact is that competent examinations were conducted by the plaintiff, the Secretary lacked power to impose the fines, whether or not any proof as to the character of the examinations was laid before him. It seems to me that there is no merit in the argument. The statute reposes in the Secretary of Labor the power to determine whether a competent examination abroad might have revealed the presence of the disease or disability. The facts of a given case are to be determined by the Secretary upon the proof before him. If a steamship company should be permitted to litigate the crucial point in court upon additional evidence, the proceedings of the Secretary in every case would be utterly futile. It is true that there is a passage in the Stranahan opinion which tends some- [fol. 542] what to bear out the plaintiff's argument, but the opinion as a whole does not support it, and the words of the statute itself show clearly that the Secretary, not the courts, is to decide whether a thorough examination had been held. My conclusion is that the Secretary, except in certain cases in which questions of law were involved and which will be discussed later, had power to entertain the proceedings.

3. We come then to the contention that the Secretary's action in these fifteen proceedings was arbitrary. In thus complaining of the outcome of proceedings before an administrative officer, the plaintiff must be prepared to show that a fair hearing was denied, or that there was an erroneous application of law by the officer, or that there was lacking any proof to sustain the determination. It does not suffice to show a state of facts upon which the court might reach a different conclusion from that arrived at by the administrative officer.

In each of these cases, the Secretary had before him the certificate or opinion of the examining doctors at Ellis Island to the effect that the disease or disability with which these aliens were afflicted might have been detected by a competent medical examination at the time of embarkation. No grounds for this opinion were set forth, but it must be presumed that the doctors had sufficient basis in fact for their opinion. In their scrutiny of the alien, they had a chance to see the outward and visible signs of the disease or disorder, as well as to form an estimate as to the length [fol. 543] of time such symptoms must have been detectable upon careful examination. The mere opinion without supporting data might be insufficient in a lawsuit before a judicial tribunal, but it cannot fairly be said to be entitled to no weight in an administrative proceeding of this sort. United States v. Day, 33 Fed. 2nd, 267. The Secretary had also before him the written protest of the plaintiff, asserting that competent examinations were conducted. Upon such proof, the Secretary was satisfied that a fine should be imposed. It has been argued that the Secretary should not treat the medical certificate or opinion as conclusive upon him, although the Supreme Court in the Stranahan case indicated that the Secretary would be warranted in attaching conclusive weight to it. Be that as it may, the records of these proceedings before the Secretary do not indicate that he considered himself bound by the medical certificate or opinion. On the contrary, he afforded to the plaintiff the opportunity to convince him that the medical certificate or opinion was erroneous.

It is plain, therefore, that these hearings, in the main, involved questions of fact only, that the plaintiff was duly notified of the proceedings and given a chance to show that fines should not be imposed, and that the Secretary had

before him sufficient data upon which to act by way of imposing fines. It is likewise plain that the plaintiff, in seeking review of the decisions of the Secretary, cannot introduce evidence not before the Secretary. The question before the court is not whether, as an original matter, the fines should have been imposed; the issue is whether the [fol. 544] Secretary had the authority to impose them upon the facts laid before him. It is therefore my opinion that as to all the causes of action which may be regarded as routine medical cases, cases where the alien has sought entrance into the United States for residence and has been excluded upon medical grounds, the plaintiff has no grievance which the court may take notice of.

4. The fifth cause of action is for recovery of the fine imposed for bringing one Capoldo to the United States, Capoldo having been afflicted with trachoma. He wished to pass through the United States in transit to Canada. He was excluded. The plaintiff claims that since Capoldo's destination was Canada, the fine should not have been levied. I do not agree. The danger of spread of the disease existed, although the alien's stay here was to be only temporary. There was also the risk that he might change his mind and remain here indefinitely, although unlawfully. It cannot be said that he was not "brought" to the United States by the plaintiff. Taylor v. United States, 207 U. S. 120, relied on by the plaintiff, is not analogous. I therefore hold that the Secretary had jurisdiction to impose the fine in the case of Capoldo.

5. In two of the proceedings, aliens found to be afflicted with ringworm were detained at Ellis Island, but were subsequently admitted to the United States after hospitalization and cure. These aliens were Rullo and DeSanctis. The admission was under section 159, title 8, U. S. C. A., [fol. 545] providing for such admission in certain cases. Notwithstanding their ultimate admission, the plaintiff was subjected to fines in both cases, the fines, of course, not including the refund of the passage moneys. The ninth and eleventh causes of action are for recovery of these fines. I believe that in these two cases the Secretary misconstrued the statute and had no authority to impose the fines. There is implicit in section 145 the requirement that the alien concerning whose case the penalty is exacted must have been

excluded from entry. It is expressly provided that the fine shall be $1,000 or $250, "and in addition a sum equal to that paid by such alien for his transportation, * * * such latter sum to be delivered by the collector of customs to the alien on whose account assessed." These two aliens having actually been admitted, the portion of the fine equivalent to the passage money was not assessed and manifestly could not have been assessed in their cases, and in my opinion the two portions of the fine are indivisible. That the purpose is to permit the exaction of a fine only in cases where the alien has been excluded would seem to be clearly indicated also by the fourth sentence of the section, to the effect that where an alien accompanying a rejected person who appears to be helpless is also "excluded", the fine shall include the passage money paid by such accompanying alien in addition to the other elements of the fine. Norddeutscher Lloyd v. United States, 213 Fed. 10, although not involving this section, is a persuasive authority in support of the construction that I have indicated above. There the question was [fol. 546] whether a fine could be imposed upon a steamship company for bringing two aliens to this country in violation of law and charging them for round trip tickets, where the aliens, though physically defective, were admitted by the Secretary under bond. The statute (Act of February 20, 1907; now part of section 154 in altered form) provided for a fine in cases where a charge for the return trip was made. Judge Lacombe, in holding that the fine could not be collected, said:

"It appears therefore conclusively that Dossick and his wife, after being fully examined, were, in conformity to the provisions of the Immigration Act, admitted to the United States. How, in view of that fact, it can be held that in selling them return tickets the owner of the steamship made charge or took security for the return of 'aliens brought to this country in violation of law' we are unable to conceive."

The admission of aliens under section 159 does not lie in the Secretary's discretion; there is an absolute right of admission where the conditions specified in that section have been satisfied. These two aliens therefore had the right to come here, in spite of their diseased condition at the time of leaving Italy, and the plaintiff committed no wrong in bringing them, even with notice of their ailments. I am

therefore of the view that where diseased or defective aliens are lawfully admitted to the United States, no fine for bringing them here can be laid upon the steamship company. The plaintiff is entitled to a verdict for the amounts [fol. 547] demanded in the ninth and eleventh causes of action.

6. The fifteenth cause of action concerns the fine of $1,212.63 imposed for bringing one Nelli to the United States. The record before the Secretary shows that Nelli was found to be an imbecile, that the medical officers certified that this condition might have been discovered at embarkation had a thorough medical examination been conducted, and that the fine was assessed. It also appeared in the record, however, that Nelli's father, an American citizen, filed a petition with the Commissioner General for the issuance of a nonquota visa to the immigrant pursuant to the Immigration Act of 1924, and that he revealed in his petition that his son was feebleminded and epileptic. The Commissioner General nevertheless approved the petition and informed the Secretary of State of his decision, and the nonquota visa was accordingly given to Nelli. The plaintiff's doctors detected Nelli's condition at the time of embarkation but accepted him as a passenger in reliance upon the fact that the United States authorities, with knowledge or notice of his condition, had issued a nonquota visa to him. The rejection of Nelli was not only proper but was mandatory, despite his possession of a nonquota visa (sections 202, 209, 213, 223). A mistake had been made in the issuance of the nonquota visa, but it seems to me that the plaintiff's officers, impressed as they doubtless were by the authorization for the visa coming from the Commissioner General and the Secretary of State, were not delinquent in taking this alien as [fol. 548] a passenger. They were warranted in the belief that in carrying Nelli on their ship, they were not committing an unlawful act. I think Judge Thacher's decision in Spanish Royal Mail Line Agency, Inc., v. United States, decided April 10, 1928, is in point. The defendant argues that the plaintiff might have protected itself by taking indemnity from this alien, but unless I read the statutes wrong, the taking of any security or indemnity is prohibited and would have subjected the plaintiff to a fine under section 154. To hold that the plaintiff should have known all the

intricacies of the immigration statutes and should have been aware of Nelli's ineligibility, seems to me wholly unreasonable. The fact is that the initial mistake was made by the Washington authorities who had plain notice of the alien's condition and nevertheless authorized the issuance of a visa, and it was this mistake which misled the plaintiff. I will therefore direct a verdict for the plaintiff upon the fifteenth cause of action.

7. In two of the cases, those of Sbragia and Crimi, the rejections were for physical defects of a nature which might affect the alien's ability to earn a living, and the fines were imposed under the second sentence of section 145. As a special ground of recovery in these causes of action, the plaintiff presses the point that, although these aliens were in fact excluded, they might have been admitted in the discretion of the Secretary of Labor upon giving bond, as provided in section 158, and that therefore the plaintiff had a right to bring them here, in order that the Secretary might [fol. 549] use his discretionary power in favor of admitting them. Section 158 provides that aliens liable to be excluded because likely to become public charges or because of physical disability (other than tuberculosis or loathsome or dangerous contagious disease) may be admitted under bond in the discretion of the Secretary of Labor. Sbragia and Crimi, while strictly excludable, were eligible for admission under this section in the Secretary's discretion, and the argument is that it was lawful for the plaintiff to bring them here, since otherwise they would have been unable to lay their cases before the Secretary for exercise of his discretion. There is force in this argument, and there are cases which, by inference at least, tend to support it. The difficulty, however, is that section 145 emphatically declares that "it shall be unlawful" to bring such aliens to the United States. How can the plaintiff have the right to do what is thus specifically made unlawful? To accept the argument would amount to deleting the second sentence of section 145. A steamship company could bring here the halt, the lame and the blind without pretense of examination and without fear of penalty. It cannot be that section 158 was intended to modify or diminish section 145, for the former is from the 1917 act while the latter in its present form is from the 1924 act and represents the last word. My

conclusion therefore is that the Secretary had power to impose fines in these two cases.

Dollar S. S. Co. v. Hyde, 23 Fed. 2nd, 910, is cited by the plaintiff, but it seems to me to be distinguishable. The facts [fol. 550] in the Hyde case were that the alien suffering from leprosy and excluded on that ground had had a seven years' prior residence in the United States, by reason whereof the Secretary had discretionary power to admit him, not under section 158 but under section 136. Section 145 in the last sentence provides that no fine shall be imposed in cases of aliens who by any of the exceptions to section 136 are exempted from the excluding paragraphs of that section. The court held that the Secretary of Labor had no power to impose a fine in such a case, since the alien must be permitted to invoke the exercise of such discretion under section 136 by presenting himself at a port of entry. In the instant case, the aliens were clearly excludable under section 136. The section imposing the fine makes no mention of exceptions under section 158 as it does of exceptions under section 136.

I think that there is a clear distinction between the cases of these two aliens and the cases of Rullo and DeSanctis which I have discussed above. In the first place these two were actually excluded while Rullo and DeSanctis were admitted. In the second place, these two were excludable aliens; their only chance of admission lay in an appeal to the Secretary's discretion. Rullo and DeSanctis, on the other hand, were not excludable aliens. As already explained, they had a right to enter the United States. The plaintiff therefore had a right to bring them to the United States without subjecting itself to penalties, but this is not true in the cases of Sbragia and Crimi.

[fol. 551] 8. In the case of Guiseppe Fusco, barred because of tuberculosis, the alien claimed a prior seven consecutive years' domicile here. But there was no finding as to the truth of this statement in the records before the immigration authorities. The alien was seeking re-admission after an absence of four years which off-hand seems hardly to be a "temporary absence". The plaintiff did not call the Secretary's attention to the alleged prior residence of the alien. It raised the point for the first time in this action. The case of Fusco does not therefore fall within the Hyde

case, supra, and in my opinion the Secretary had authority to exact the fine.

All of these cases arose prior to the time when the arrangement of having United States surgeons make medical examinations in Europe was put into effect. Presumably fines against steamship companies under section 145 could not properly be imposed in cases where prospective immigrants had undergone methodical inspection by our own surgeons in Europe. The fact that they had passed such inspection would be most convincing proof that any disease or defect found on arrival here did not exist in discoverable condition at the time of embarkation. That question, however, is not presented in this suit.

From what has been said, it follows that the defendant's motion to strike out all testimony relative to the physical examinations conducted by the plaintiff in Italy will be granted. I direct a verdict for the defendant upon all causes of action except the ninth, eleventh and fifteenth, and as to these three I direct a verdict for the plaintiff. The plaintiff will have a verdict for $2,412.63, with inter-
[fol. 552] est on $200 from June 23, 1923, on $1,000 from February 28, 1927, and on $1,212.63 from May 26, 1925. No costs to either party.

(Sgd.) Robert P. Patterson, U. S. D. J.

September 2, 1930.

In United States District Court, Southern District of New York

L. 45-117

Lloyd Sabaudo Societa Anonima per Azioni, Plaintiff,

against

Philip Elting, Collector of Customs of the Port of New York, Defendant

Memorandum, Patterson, D. J.

Patterson, D. J.:

Subsequent to the time when I handed down my opinion in this case, the attorneys for the plaintiff called my at-

tention to certain instructions issued by the State Department to United States consuls abroad, relative to the issuance of visas and to the production of medical certificates as a prerequisite to obtaining visas. I believe that these instructions were put in evidence by the plaintiff in the [fol. 553] course of the trial, but my attention was not called specifically to them. I have now examined these instructions, but they have not changed the views expressed in my opinion. I will direct a verdict as indicated therein.

(Sgd.) Robert P. Patterson, U. S. D. J.

February 18, 1931.

In United States District Court

[Title omitted]

Notice of Appeal

Sirs: Please take notice that the plaintiff, Lloyd Sabaudo Societa Anonima Per Azioni, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit at the next Term thereof, to be held in the Court Rooms in the [fol. 554] Post Office Building, Borough of Manhattan, City of New York, from that portion of the judgment entered herein on the 6th day of March, 1931, dismissing the complaint as to causes of action numbered, First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, Twelfth, Thirteenth and Fourteenth, and to each and every part of that portion of said judgment, as well as the whole of said portion thereof.

Dated New York, March —, 1931.

Yours, &c., Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Plaintiff. Office & P. O. address: 27 William Street, New York City.

To George Z. Medalie, Esq., United States Attorney, Attorney for Defendant. Office & P. O. address: Post Office Building, New York City; Charles Weiser, Esq., Clerk.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL

Upon the Assignments of Error the foregoing appeal is hereby granted.

Dated March 13th, 1931.

Robert P. Patterson, U. S. D. J.

[fol. 555] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes Lloyd Sabaudo Societa Anonima Per Azioni, plaintiff-in-error in the above entitled and numbered cause, and in connection with its appeal in this case assigns the following errors, which the plaintiff-in-error affirms occurred on the trial of the issues of fact and law herein, and on which it relies to reverse the judgment entered herein, as appears of record:

First. In that the Court directed the jury to return a verdict in favor of the defendant on causes of action First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, Twelfth, Thirteenth and Fourteenth.

Second. In that the verdict returned on the aforesaid causes of action, upon the direction of the Court, is contrary to the evidence submitted on the trial of said case and is not supported by it.

[fol. 556] Third. In that the judgment entered by the Court in favor of the defendant on the aforesaid causes of action is contrary to the evidence submitted upon the trial and is erroneous in law.

Fourth. In that the Court denied the application of plaintiff for the direction of a verdict in its favor on the aforesaid causes of action.

Fifth. In that the Court dismissed the complaint as to the aforesaid causes of action.

Sixth. In that the Court granted the defendant's motion to strike out the testimony of Alfonso Falso, Eugenio Verando, Roddolo Giacinto, Candido Baldovino, Vincenzo Leanza, Nicola Izzo, Sebastiano Musu, William Gargiullo, Federico Reale, Duranti Valentini Curzio, Stanley R. Lawson, Merrigio Serratti, Daniel A. Caputi, Pietro Dandini De Sylva, Joseph E. Lynch and Giovanni Valenzi.

To all of the foregoing errors the plaintiff duly took exceptions and the exceptions were allowed.

Wherefore the plaintiff-in-error prays that the judgment of the United States District Court for the Southern District of New York in said cause be reversed.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Plaintiff-in-Error. Office & P. O. address: 27 William Street, Borough of Manhattan, New York City.

[fol. 557] Citation, in usual form, omitted in printing.

[fol. 558] In United States Circuit Court of Appeals for the Second Circuit

Lloyd Sabaudo Societa Anonima per Azioni, Plaintiff-Appellant,

against

Philip Elting, Collector of Customs of the Port of New York, Defendant-Appellee

Order as to Depositions

On the subjoined consent, and on motion of Kirlin, Campbell, Hickox, Keating & McGrann, attorneys for the Plaintiff-Appellant, for good cause, it is

Ordered, that the depositions offered in evidence upon the trial of this case need not be printed and incorporated in the transcript of record on the appeal herein, but may be deposited before the hearing of the appeal herein with the Clerk of this Court, and that upon being so deposited they be taken and considered by this Court as a part of

the transcript of record, with the same force and effect as if printed in full and incorporated in the transcript of record.

Learned Hand.

July 16, 1931.

Entry of the foregoing order is hereby consented to.
Dated New York, July 15th, 1931.
George Z. Medalie, U. S. Attorney, for the Defendant-Appellee.

[fol. 559] In United States District Court

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.
Dated, July —, 1931.
Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Plaintiff. George Z. Medalie, U. S. Attorney, Attorney for Defendant.

[fol. 560] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 561] In United States Circuit Court of Appeals for the Second Circuit

L. 45117

Lloyd Sabaudo Societa Anonima per Azioni, Plaintiff-Appellant,

against

Philip Elting, Collector of Customs of the Port of New York, Defendant-Appellant

Statement under Rule XIII

The above action was commenced on July 22, 1929.
Complaint was filed on July 23, 1929.

Answer was filed on January 29, 1930.

The action was tried before the Honorable Robert P. Patterson, and a jury of one, on the 12th, 13th, 18th, 19th days of June, 1930, and the 10th, 11th and 13th days of July, 1930, and on the 3rd day of September, 1930, a verdict was directed for the defendant as to the causes of action numbered "1," "2," "3," "4," "5," "6," "7," "8," "10," "12," "13," and "14," and a verdict was directed for the plaintiff in the sum of Two thousand four hundred twelve and 63/100 ($2,412.63) Dollars, plus interest on the sum of Two hundred ($200) Dollars from June 23, 1923, on the sum of One thousand ($1,000) Dol-
[fol. 562] lars from February 28, 1927, and on the sum of Two thousand two hundred twelve and 63/100 ($2,212.63) Dollars from May 26, 1925 (fol. 863, Plaintiff's record).

Judgment was entered in favor of the plaintiff in the sum of Three thousand one hundred forty-six and 45/100 ($3,146.50) Dollars on March 6, 1931.

Appeal was taken to this Court on the 4th day of June, 1931.

An order settling the papers to be printed in the defendant's transcript of record on cross-appeal was signed by Hon. Martin T. Manton on December 7, 1931, and filed in the office of the Clerk of this Court on December 8, 1931.

Pursuant to said order, the summons, complaint, answer, judgment, opinion and memorandum of Patterson, D. J., have not been printed herein but are to be found in the plaintiff's transcript of record. Likewise, that portion of defendant's bill of exceptions, which is identical with pages 43 to 289 inclusive of the plaintiff's transcript of record, has not been printed herein, but is to be found in the plaintiff's transcript of record.

Under said order all of the depositions ordered by this Court by order dated July 16th, 1931, to be considered part of the plaintiff's transcript of record, without being printed therein, are also deemed to be part of this transcript of record on cross-appeal of the defendant.

[fol. 563] **Bill of Exceptions**

PLAINTIFF'S EXHIBIT 11

Report of Execution of Department Decision

U. S. Department of Labor, Immigration Service

Port of New York, Dec. 27, 1923.

Commissioner General of Immigration, Washington, D. C.

SIR: In accordance with Department decision by wire of 11/24, 1923, the alien was/were deported via S. S. ——, sailing —— —, 19—, and the alien Rullo Gemma was duly admitted outright Dec. 27, 1923.

Respectfully, (Name:) Harry R. Landis, (Title:) Assistant Commissioner.

Remarks: ——.

*The above advice must cover but one case as originally submitted to the Department.

[fol. 564] 55385/562

July 21, 1924.

Commissioner of Immigration, Ellis Island, N. Y. H.:

The Bureau refers to your letter of July 12th. No. 98894/706, relative to proposed fine against the S. S. Conte Verde arriving on October 16, 1923, for bringing to the United States the alien Gemma Rullo who was certified as being afflicted with ringworm of the nails, a loathsome, contagious disease, which might have been detected by means of a competent medical examination at the foreign port of embarkation, in the opinion of the examining Public Health Surgeons.

The line, it is noted, protests against the imposition of a fine, on the ground that the aliens carried by itself are examined by competent medical practitioners at the foreign ports and that the reason the disease with which this alien was afflicted was not then discovered was because it was not in existence or was not sufficiently developed to permit of a diagnosis.

In view of the official medical certificate, however, and the lack of positive proof that the disease did not exist at the

time of embarkation it is felt that the penalty as provided in Section 9 of the Act of February 5, 1917, should be imposed. You are directed, therefore, to take appropriate action whereby the sum of $200 now on deposit on account of said alien, may be covered into the Treasury as an immigration fine. As the alien was admitted after hospitaliza-
[fol. 565] tion and cure, the amount of passage is to be returned to the depositor.

Approved.

(Signed) W. W. Sibray, Assistant Commissioner General. (Signed) Robe Carl White, Second Assistant Secretary.

JWB.

Lloyd Cabaudo, Fast Italian Mail Line, General Agency for United States and Canada

Cable Address: "Sabaudo", New York

Col. Dr. M. Serrati, General Manager, 3 State Street

File No. 98894/706

New York, July 10th, 1924.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

Sir: With reference to "Notice of Liability for Fine" dated June 7th, 1924, and served on us June 13th, 1924, in [fol. 566] the case of Gemma Rullo, who arrived on our SS. Conte Verde, October 16th, 1923, and was certified for Ringworm of the Nails, we beg to protest the imposition of any fine in this case, and desire to submit the following facts:

1. That in bringing the above named alien to the United States, our Company had no intention to violate the law. We employ competent medical examiners of long practice and experience, and the reason the disease herein certified was not discovered is that the same had not developed and did not exist prior to embarkation.

2. That the passport of the above named alien was duly visaed by the American Consul.

3. That the above named alien was treated in the Ellis Island Hospital, cured of her disease, and has been admitted to the United States.

In view of the above facts, we request that no fine be assessed, and that the Collector of Customs be instructed to refund to us the amount he holds on deposit in this case.

Respectfully, Lloyd Sabaudo, Agency in New York.
D. A. Caputi, Landing Agent.
DAC:EA.

[fol. 567] Notice of Liability for Fine on Account of Bringing Diseased or Mentally Afflicted Aliens to the United States

U. S. Department of Labor, Immigration Service
Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

98894/706

June 7, 1924.

Lloyd Sabaudo, agents of the vessel "Conte Verdi", Oct. 16, 1923 (master, agent, owner or consignee), 3 State St., New York City:

In conformity with the requirements of Rule 28 of the Immigration Regulations, you are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provision of Section 9 (or Section 35) of the Immigration Act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward bound voyage upon condition that you deposit with the collector of customs at this port, prior to [fol. 568] her sailing, the sum indicated below as security for the payment of the said fine, should it be imposed. Please submit all evidence in duplicate.

Amount required to be deposited: $200.00 (also ticket refund $87.74).

Name of alien: Rullo, Gemma, 19-F-Single.

Defect or disability upon which fine is imposed: Ringworm of Nails.

H. R. Landis, Second Assistant Commissioner.

Received above notice June 13, 1924, at 1:50 P. M.

Lloyd Sabaudo, per P. Ferrara.

Witness: Samuel Young.

[fol. 569] Stimpson—138, 139, 140

Names of Aliens: Labriola, Maria; Rullo, Lucia; Rullo, Donato; Rullo, Maria Incoronata.

It. So.

No. 23.

Deferred case.

Before a board of special inquiry held at Ellis Island, New York Harbor, N. Y., this 4th day of November, 1923.

Present: Couch (chmn.), Root, and Stimpson, Insps.

Def. Oct. 24/23. L. B. 166.

S. S. "Conte Verdi," Oct. 16/23.

(Minutes of previous hearing made a part of this hearing.)

Stimpson—139

Name of alien: Rullo, Maria D., 15, fem.

Italy So.

No.35.

New Case.

Cause of detention: LPC. Chas. L. Behlert, Insp.

Steamship: "Conte Verdi", Oct. 16/23. Ll. Sab.

[fol. 570] Destination: Hoboken, N. J.

List 15, No. 28.

Quar. 10/14/23.

3:20 A. M.

Stimpson—140

Name of alien: Rullo, Gemma.

Italy, So.

No. 22.
Deferred case.
Def. Oct. 24/23. L. B. 166.
S. S. "Conte Verde", 10/16/23.
(Minutes of previous hearing made a part of this hearing.)

Medical Certificate: This is to certify that the above described person has this day been examined, and is found to be afflicted with simple goitre—L. B. Byington, Asst. Surgeon.

Q. Your daughter Maria has been returned from the hospital and there is no reason why she should be held in the hospital. (No. 10437.)

Q. Your daughter Gemma has been certified as having [fol. 571] trichytaphis of the nails, a loathsome contagious disease, which makes it mandatorily necessary that she be excluded by this board. Would you and your wife wish to have your wife separated from her by reason of deportation or in other words do you wish to take your wife and the other children with you and allow the girl to be deported alone?

A. I desire to take my wife and the four children, and I have spoken that I desire to have my daughter Gemma treated in the hospital at my expense. (Wife agrees in the expression of the witness, her husband.)

Mr. Root: I move to exclude the alien Gemma as having been certified to be suffering from a loathsome contagious disease, to wit, ringworm of the nails. I move to admit the balance of the family.

Mr. Stimpson: I second the motion.

Mr. Couch: Unanimous.

Excluded (1) Balance Admitted.

You have been denied admission into the U. S. and will be returned without expense to yourself, on the first available ship sailing of the line bringing you here, in the same class in which you arrived.

You are entitled to a refund of the money paid for your passage in the discretion of the Hon. Sec. of Labor.

Do you understand your rights?

A. Yes.

Q. What did you pay for your passage (excluded alien)?
A. 1800 lire and head tax.
Q. Address?
A. Gemma Rullo di Fran., Presso Sgr. Costello, Melfi, Potenza, cr. Pasq. Lobriolo.

M. Avery, Secretary.

[fol. 572] U. S. Department of Labor, Immigration Service

LB-166

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., This 24th Day of October, 1923

Present: Insps. Couch. (Chmn.), Benson and Sherman; Int. Andreaccio.

Names of Aliens:

	Labriola, Maria G.	48f	M
ch	Rullo, Lucia	9f	
	" Donato	8m	
	" Maria I.	12f	
	" Gemma	19f	S
	Italy—South		

LPC Sec. 18 #5 LCD—Insps. Behlert & Fisch.
SI 22 & "3—SS Conte Verde", Oct. 16, 1923.
Quar. 10/14/23 3.20 a. m.—Embarked at Naples, Oct. 4, 1923.
(Daughters, Gemma and Maria Donata, 15, in hospital.)
Med. Cert. 10437 for Gemma.—This is to certify that the above-described person has this day been examined and is [fol. 573] found to be afflicted with Trichophytosis of nails, a loathsome contagious disease. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation.—(Sgd.) J. E. Faris, C. W. Chapin.

Alien, being duly sworn, testified:

All born in Melfi, Potenza, Italy, where I have brother, Pasquale, in good health.
Cannot read (tested Class 4-0709 Italian, does not read): daughter Gemma reads.

Husband paid passage for all; housewife; never in U. S.; going to husband, Francesco Rullo, and three married daughters, Santa, Silvia and Maria; have 3,700 lire; coming to join husband and children and remain permanently; show three Italian passports issued in Melfi, Sept. 25, 1923, and visaed by the American Consulate at Naples Oct. 1, 1923, notation "Italy"; passport numbers are 12766, 12767 and 12768.

Never debarred or deported from the U. S. or Canada.

Q. Why is your daughter, Maria Donata, in hospital?
A. Something the matter with scalp.
Q. How long has your husband been in the U. S.?
A. Three years; daughter are here 4 years.
Q. How have you been supported since?
A. Husband supported us always.

[fol. 574] Witness sworn:

Q. What is your name and address?
A. Francesco Rullo, 225 Jefferson St., Hoboken, N. J.
Q. For whom do you call?
A. My wife and five children (names them).
Q. How long are you in the U. S.?
A. Three years last time; five years previously.
Q. Have you declared your intention to become an American citizen?
A. No.
Q. What is your occupation?
A. Laborer; earn $34 weekly; have $350 saved and four rooms furnished; own no real property.
Q. Have you other relatives here?
A. Daughters, Silvia, married to Giacomo Capitelli, at same address; son-in-law is here 19 years and is an American citizen; daughter Maria, married to Mateo Dellissandro, 317 Jefferson St., Hoboken; she is here 4 years and her husband served in the U. S. army; daughter, Maria Santa, married to Rafaele Irenzo; she is here three years and her husband four years; live at 223 E. 120th St., N. Y. C.
Q. Are they interested in the care and support of your family if necessary?
A. Yes.

Mr. Sherman: I move to defer final action pending return of children from hospital.

Mr. Benson: Second the motion.

Chairman: Unanimous.

Louis Benson, Secretary.

[fol. 575] 55385/553

November 23, 1923.

Immigration Service, Ellis Island, N. Y. H.:

Dedicant August Neale, Benjamin Levin, Majsche Kapelowics and wife, Chaskel Burd, Dimitrye Nosnikoff, Nuchin Knepelman, Jacob Katz distinctive bondage Ghitel Blechman and child nine months five hundred both distinctive bondage Leia Gimelstein nine months, distinctive hospitate Gemma Rullo and admit when cured, distinctive supplement Srul Gartzman to determine from evidence to be submitted whether alien is artist.

Sibray, Assistant Commissioner General.

Attest: —— ——.

MS.

55385/562—Ellis Island

November 23, 1923.

In re Gemma Rullo, Aged 19

The case comes before the Board of Review as an application for hospital treatment.

No hearing.

This record relates to a 19-year-old Italian girl who arrived at the Port of New York on the SS. Conte Verdi Octo-
[fol. 576] ber 14 accompanied by her mother and three other children who were admitted to the husband and father; never here before; coming to remain permanently.

Excluded as being afflicted with a loathsome contagious disease, namely, ringworm of the nails.

The girl's father appeared in her behalf. He is clearly in a position to have the girl accorded the treatment necessary to cure ringworm of the nails. The girl appears to be otherwise desirable.

It is recommended that hospital treatment be granted under the usual conditions and that the girl be admitted if and when cured.

W. N. Smelser, Chairman, Secy. & Comr., Gen'ls Board of Review.

ES/MLC.

So ordered.

Robe Carl White, Second Assistant Secretary.

[fol. 577] PLAINTIFF'S EXHIBIT 13

In answering refer to No. 98980/229.

U. S. Department of Labor, Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

April 23, 1927.

Commissioner-General of Immigration, Washington, D. C.

In re Rocco De Santis. Bureau No. 55575/864

This alien was discharged from the hospital on April 13th as no longer suffering from ringworm of the scalp and he was admitted in the custody of an attendant to go to his father in Windsor, Ontario.

All hospital expenses have been defrayed and request is made for cancellation of the bond and for the issuance of an order on the Federal Reserve Bank of New York for the delivery of the Liberty Loan Bond deposited as security.

Byron H. Uhl, First Assistant Commissioner.

EL. C. B.

[fol. 578] 55575/864

February 14, 1927.

Commissioner of Immigration, Ellis Island, N. Y. H.:

Reference is made to your letter of February 7th, No. 98980/229, relative to a proposed fine against the S.S. Conte

Rosso, arriving on October 23, 1926, for bringing to the United States the alien Rocco De Santis, who was certified as being afflicted with ringworm of the scalp, a loathsome, contagious disease which, in the opinion of the examining Public Health Surgeons, might have been detected by means of a competent medical examination at the foreign port of embarkation.

The protest of the Line against the imposition of a fine, dated February 3rd, has been reviewed. Briefly, this sets forth that the alien was not accepted as a passenger for the United States, but as one destined to Canada, where his father resided, and that he had a passport upon which the Consul had placed a "transit" visa. That this status is proved by the fact that his mother and another member of the family were permitted to proceed and did proceed to Canada, where he will join them later. The Line agrees that the Government has a right to refuse to permit the alien to pass through the United States, but it denies that there is authority for imposing a fine. It is also contended that the examination accorded this alien at the foreign port did not reveal the existence of the disease, and medical certificates are forwarded to prove this point. It is also [fol. 579] contended that the Surgeons at your station did not certify the existence of the disease until six days after arrival and that this, in itself, indicates that it had not reached a point where it could be diagnosed on arrival and certainly not at the time of embarkation.

The contention of the Line as to the authority to impose the fine is without value. The law is so worded that a penalty may be imposed for bringing a diseased alien to the United States when the existence of the disease might have been detected at the foreign port. In this case the alien was brought to the United States and it is immaterial whether he sought entry for permanent residence or for the purpose of passing in transit through this country. He endangered others on the ocean voyage, and would have had opportunity to spread the contagion had he been permitted to land for any time whatever. On February 7, 1927, the alien was still in the hospital at Ellis Island. His mother was admitted on bond on November 20th, and the child is to join her when he is cured.

The only question involved herein is whether the disease with which this alien was afflicted might have been de-

tected by means of a competent medical examination at the foreign port of embarkation and this the Bureau answers in the affirmative, basing its opinion not only on the official certificate but the absence of any satisfactory evidence to call that certificate in question.

It is ruled that the penalty as provided in Section 26 of the Act of May 26, 1924, should be imposed and you are [fol. 580] directed to take appropriate action whereby the sum of $1,000 may be deposited in the Treasury as an immigration fine. The amount of passage in the case of the alien's mother, $108, is to be returned to the depositor, and the amount of passage in the case of the alien himself, $25, is to be returned to the depositor as soon as cure has been effected and the applicant permitted to proceed to Canada.

Harry E. Hull, Commissioner General.

Approved.

W. W. Husband, Second Assistant Secretary.

JWB.

Notice of Liability for Fine on Account of Bringing Diseased or Mentally Afflicted Aliens to the United States

U. S. Department of Labor, Immigration Service

Office of Commissioner, Port of New York

No. 98980/229

December 1, 1926.

To Lloyd Sabaudo Line, agent of the vessel "Conte Rosso" at N. Y. 10/23/26 (master, agent, owner, or consignee), 3 State Street, New York City:

You are hereby notified that the certificate of the examining surgeon, based upon a physical and mental ex- [fol. 581] amination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 26 of the "Immigration Act of 1924," or Section 35 of the Immigration Act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the

vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outwardbound voyage upon condition that you deposit with the Collector of Customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine should it be imposed.

Name of alien	Passage refund	Amount required to be deposited	Defect or disability upon which fine is imposed
Rocco De Santis, 4, m.....	$25.00	$1,000	Ringworm of Scalp
Gaetana Simonelli, 25, f.....	108.00	.....	Accompanying alien

For the Commissioner:

(S.) Frank Hayes, Inspector in Charge, Law Division.

MB.

Received the above notice Dec. 3, 1926, at 3:15.

—— ——.

Witness: Samuel Young.

[fol. 582] Lloyd Sabaudo, Fast Italian Mail Line, General Agency for United States and Canada

Col. Dr. M. Serrati, General Manager

Cable Address: "Sabaudo", New York

File No. 98980/229

3 State Street,
New York, February 3, 1927.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: We are in receipt of your "Notice of Liability for Fine" dated December 1, 1926, and served on us December 3, 1926, in the case of Rocco De Santis, who arrived on our SS. "Conte Rosso" October 23, 1926.

A bond has been filed with the Collector of Customs to guarantee payment, should the fine be imposed, of the sum of $1,133.00, as follows:

Proposed fine for "Ringworm of Scalp"	$1,000.00
Proposed refund of passage	25.00
Proposed refund of passage for Gaetana Simonelli	108.00
Total	$1,133.00

[fol. 583] We desire to protest the imposition of any fine in this case, and beg leave to submit the following stated facts:

1. That in granting passage to the above named alien on our steamer we did not violate the law. He was not destined to the United States but to Canada. He accompanied his mother and brother and was coming for the purpose of joining his father, Amato De Santis, who resides at 301 Wyandotte Street, East Windsor, Ontario, Canada. The passport of these aliens bears the Transit Certificate of the American Consul in Naples, and the sworn testimony of Mrs. De Santis before the Board of Special Inquiry shows that these passengers had no intention to reside in the United States but intended to proceed directly to Canada. In fact Mrs. De Santis and the other child have been admitted and proof that they proceeded directly to Canada has already been submitted to the Commissioner of Immigration at Ellis Island. The above named alien will join his father and mother in Canada as soon as he is cured of his disease.

2. That while the Immigration Laws of the United States grant the right to the U. S. Immigration Authorities to deny the transit privilege to diseased aliens, this cannot be construed as a right to impose fines in these cases. It was the intention of Congress to impose fines only when the aliens are destined to the United States. If Congress had intended that fines be imposed in cases where the aliens are [fol. 584] merely passing through the United States it would have stated this clearly in the Act. There is nothing in the law which would warrant you in imposing a fine in this case, and we request, therefore, that no fine be imposed.

3. That this alien was carefully examined by the expert surgeons of the Royal Italian Emigration Service in Naples, Italy, who found the alien free from Ringworm of the Scalp or any symptoms of this disease. Just prior to embarkation he was carefully examined by our Board of Medical Examiners who also found him to be free from Ringworm of the Scalp or any symptoms of the disease. We are attaching hereto the affidavit of Dr. Muse who is the chairman of our Board of Medical Examiners at the port of Naples, Italy. The affidavit is sworn to before the

American Consul in Naples, Italy, and Dr. Muse swears therein that this alien was carefully examined by him and his colleagues and that he was found to be free from Ringworm of the Scalp or any symptoms of this disease. For your convenience we are attaching also a translation of this affidavit.

4. That this alien, therefore, was examined not only once before embarkation but on three separate occasions, first by the physician whose certificate is on file at the American Consulate in Naples, Italy, secondly by the surgeons of the Royal Italian Emigration Service, and thirdly by our own Medical Examiners. All of these doctors found that the [fol. 585] alien showed no symptoms of Ringworm of the Scalp. This alien embarked on our ship on October 12, 1926, and arrived at the port of New York on October 23, 1926. He was placed in the Hospital at Ellis Island and was not certified until October 29, 1926. In other words although this alien on arrival here had spent ten days at sea the disease had not yet fully developed and he had to be kept in the hospital for six (6) days more under observation before he could be certified that he was afflicted with the disease. These facts can lead logically to but one conclusion, namely that the disease did not exist prior to embarkation. The law requires that a transportation company must exercise reasonable diligence to prevent diseased aliens from being brought to the United States. The point at issue in this case, therefore, is not whether the alien had Ringworm of the Scalp when he arrived here or even prior to embarkation, but whether the Company has taken every reasonable precaution to detect the disease. The facts herein presented together with the affidavit of our Dr. Muse, herewith enclosed, prove conclusively that our Company has done everything humanly possible to detect this disease and has, therefore, exercised reasonable diligence within the meaning of the statute. No fine, therefore, should be imposed in this case.

5. That as above stated the mother of this alien has already been admitted and this alien will be admitted as [fol. 586] soon as he is cured of the disease. They are, therefore, not entitled to a refund of their passage.

In conclusion no fine should be imposed in this case because the alien was not destined to the United States but to

Canada, and also because we have shown that our company has done everything humanly possible to detect this disease and that, therefore, it has been duly diligent within the meaning of the statute. For these reasons we request that no fine be imposed in this case.

Thanking you for your kind consideration of this matter, we remain

Respectfully yours, Lloyd Sabaudo, Agency in New York. D. A. Caputi, Landing Agent.

DAC:EM.
Enclosure.

Translation

I, the undersigned, Muse Sebastiano, aged 50, hereby certify that I am the trusted physician for the Lloyd Sabaudo Steamship Company having graduated from the Royal University of Naples in the year 1902, and have practiced Medicine and Surgery since the year 1902.

That while acting in the capacity of trusted physician for the Lloyd Sabaudo Steamship Company, I am entrusted with the examination of all Italian passengers embarking on the steamers of the said Line in the port of Naples and destined to the United States.

[fol. 587] That I am very well acquainted with the American Federal Laws on Immigration and the physical requirements of passengers in order that they may be admitted in the United States.

That on October 12th, 1926, I recall having examined one third class passenger, Rocco De Santis, who was to have embarked on the SS. "Conte Rosso."

My examination is always accurate, beginning from the head, eyes, etc., and of the entire body, while with opportune questions of the immigrant I assure myself of his mental state.

The said Rocco De Santis did not have present any physical defect and all his organs appeared in good functioning conditions, for which causes I have not hesitated to authorize his embarkation.

It is probable that new circumstances which arose during the voyage have caused some complication which has rendered apparent same vital organic deficiency which could not have been detected neither by me or by any of my col-

leagues during a regular physical examination, no matter how accurate, prior to embarkation.

(Signed) Dr. Sebastiano Muse.

KINGDOM OF ITALY,
City and Province of Naples,
Consulate General of the
United States of America.

Signed and sworn to before me, this 8th day of January, 1927.

(Signed) Howard K. Travers, Consul of the United States of America, Naples, Italy.

American Consular Service Fee Stamp, $2.00.

[fol. 588] Report of Execution of Department Decision

U. S. Department of Labor, Immigration Service

Port of New York, N. Y.

Nov. 26, 1926

11-20-1926.

Commissioner General of Immigration, Washington, D. C.

SIR: In accordance with Department decision No.* 55575/864 of 11/13, 1926, the alien was/ were deported via S. S. ——, sailing —— —, 19—, and the alien Gaetana Simonelli & Federico De Santis were duly admitted on bond 11-20-26.

Respectfully, (Name:) Byron H. Uhl, (Title:) First Asst. Commissioner.

Remarks: ——.

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*The above advice must cover but one case as originally submitted to the Department.

[fol. 589] Treasury Department, United States Public Health Service, Ellis Island, N. Y.

Office of Medical Officer in Charge U. S. Public Health Service Hospital No. 43

[SEAL]

Memorandum

November 13, 1926.

Re Rocco De Santis; age, 4; Nat. Italy; ex SS. "Conte Rosso"; arr. 10/23/26; admitted to hospital same day; cert. ringworm of scalp 10/29/26

The disease with which the above named alien is afflicted is not easily curable and he cannot be landed without danger to other persons. Because of the chronicity of this disease, it is impossible to estimate even approximately the length of time required to effect a cure.

W. S. Bean, Executive Officer, Hospital Section.

Respectfully referred to the Commissioner of Immigration.

Re 98980/229 of November 11th, 1926.

E. K. Sprague, Chief Medical Officer.

[fol. 590] 55575/864—E. I.

November 12, 1926.

In re Mrs. Gaetana Simonelli, 25; and children, Federico De Santis, 3, and Rocco De Santis, 4

Considered and recommended that treatment be accorded Rocco De Santis under the usual treatment bond, containing a stipulation that, when a cure is effected, transportation for the child and attendant will be furnished to accompany the child to destination; and that, if and when said bond is furnished, Mrs. Gaetana Simmonelli and son Federico De Santis be permitted to proceed in transit to Canada.

W. W. Smelzer, Chairman, Secy. & Comr., Gen'ls Board of Review.

FJP:EY.

So ordered:

(Signature Illegible,) Second Assistant Secretary.

[fol. 591] U. S. Department of Labor, Immigration Service

KS-73

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., November 3, 1926, 11:05

Present: Messrs. Parbury (Chmn.), Collins & Miss Steckler; Int. Casarico.

Names of Aliens: Simonelli, Gaetana, 25f, Married; De Santis, Rocco, 4m, ch.; De Santis, Federico, 3m, ch.; Italy, So.: Italian.

Section 18; LCD & LPC. Insp. Behlert.

SI 23. SS. Conte Rosso, Lloyd Sabaudo Line.

Arrived at New York Harbor 10/23/26.

Delivered at Ellis Island 10/23/26.

Rocco placed in hospital on arrival. From T. D. 10/30/26; 2 P. M.

Rejected for Canada; signed W. H. S.

Steerage. Embarked at Naples, October 13th.

Medical Certificate #4672, dated 10/29/26, for Rocco De Santto, 4m. — This is to certify that the above-described person has this day been examined and is found to be afflicted with: Ringworm of the Scalp, a loathsome, contagious disease. In our opinion the condition herein certified might have been detected by competent medical ex- [fol. 592] amination at the foreign port of embarkation.— (Sgd.) Drs. A. J. Aselmeyer and F. Summerall.

Eldest Alien, sworn by Insp. Parbury, testified thru interpreter:

All born in Arce, Province of Caserta, Italy, where I have my father, Giuseppe Simonelli, in good health.

Read.

My husband, Amato De Santis, 301 Wyandotte Street, East Windsor, Ontario, Canada, paid passage.

Housewife.

Never in the United States.

Going to husband at the address given.

Forty-two dollars and five hundred lire; ticket for all to Windsor.

Coming to the United States to pass in transit to Canada.

Shows Italian passport issued at Sora, September 1, 1926; transit certificate #60-/61-/62 issued by Alfred T.

Nester, Consul of the United States at Naples, Italy, on September 25, 1926; in transit to Canada.

Never debarred or deported from the United States or Canada.

Q. You have the right to have a friend or relative present at this hearing. Do you wish to avail yourself of this right?

A. I waive the right.

Q. Have you any relatives in the United States?

A. I have two brothers in the United States but I don't know the address.

[fol. 593] Q. How long has your husband been in Canada?

A. Three years.

Q. Have you any intention of remaining in the United States?

A. No.

Q. One of your children has favus, a loathsome contagious disease. How long has it had that disease?

A. I don't know.

Q. The representative of the Canadian Government has denied the application of yourself and children for admission to Canada. Have you any reason to give now why you should not be returned to Italy?

A. My husband doesn't know anything and is expecting me.

By Mr. Collins: I move to exclude the child Rocco De Santis as a person certified to be afflicted with a loathsome contagious disease.

By Miss Steckler: Seconded.

By Mr. Parbury: Unanimous.

Certificate Ex Case 11/3/26.

(Section 18, Immigration Laws, 1917.)

Rocco De Santto, age 4 years, native of Italy, So.

Arrived 10-23-26, per S. S. Conte Rosso.

Ringworm of scalp. Cert. 10/29/26.

The above-named alien, rejected by the Board of Special Inquiry, is, in my opinion, helpless from Infancy and above stated cause, for the purposes contemplated by Section 18.

(Sgd.) G. M. Corput, Surgeon, P. H. Service.

[fol. 594] By Mr. Collins: The medical division having issued a certificate that the child is helpless from infancy and cause stated, I move to exclude the mother, Gaetana Simonelli, as accompanying alien under Section 18, and in addition they all having been rejected by the Canadian representative at this station, I move to exclude the mother and both children under Section 13 (a) (1) of the Act of 1924 in that they are not in possession of any immigration visas for the United States.

By Miss Steckler: Seconded.

By Mr. Parbury: Unanimous.

Q. What is the cost of passage for yourself and Rocco?
A. 2,075 lire for ticket and a half.
Q. What is your foreign address?
A. Via Pazzaga, Arce, Province of Caserta, Italy.

To Eldest Alien:

You and your children have been denied admission to the United States, Rocco as a person certified to be afflicted with a loathsome contagious disease, and the medical division having issued a certificate that he is helpless from infancy and cause stated you have been denied admission as accompanying alien, and in addition you and your two children have been denied admission to the United States as not being in possession of any immigration visas for the United States all of you having been rejected by the Canadian representative at this station. Rocco has no right of appeal from the decision of this Board. You and your child Federico have the right to appeal from the decision of this Board to the Hon. Secretary of Labor at Washington, who will review the evidence here taken and decide whether you [fol. 595] shall be admitted or debarred. Do you wish to appeal in behalf of yourself and younger child?

A. No.

If deported you will all be returned to the country whence you came, by the first available ship of the line which brought you, in the same class in which you arrived, and without expense to yourself. The Secretary may, in his discretion, order a refund of the passage money paid for yourself and Rocco, in which event it will be sent to you at the address given. You are further advised that it will be unlawful for Rocco to return within one year of the date of

his deportation without first having obtained the permission of the Secretary of Labor to do so. Do you understand your rights?

A. Yes.

11:25.

Kate Stackler, Secretary.

Kindly do not write of more than one subject in any one letter.

In your reply refer to No. 9709.

Department of Immigration and Colonization, Dominion of Canada

WHS/CM

Ellis Island,
New York, November 10th, 1926.

SIR: I beg to refer to the case of Rocco De Santis, aged 4 years, ex the S. S. "Conte Rosso" of October 23rd, 1926, [fol. 596] certified by the Public Health Service here as having Ringworm of the Scalp. This boy, in company of his mother, Gaetana Simonelli De Santis, and his brother, Federico De Santis, came here enroute to Windsor, Ontario, to join husband and father, Amato De Santis, 401 Mercer Street. Previous to their setting forth from Italy, the father had made application to the Department of Immigration & Colonization at Ottawa for their entry, and was informed that their arrival here in good health would be a condition of entry.

Inasmuch as this Office is informed that treatment will probably effect a cure in the case of Rocco De Santis, certified Ringworm of the Scalp, and in view of the fact that the father has sent money to Ellis Island, to the amount of $165.00, as expenses for treatment of his son in the Ellis Island Hospital, it may be stated that supplement of the mother's petition is herewith made. If the petition is granted by the Bureau at Washington, the mother and the younger brother, Federico De Santis, will be passed by this Office as eligible to proceed to Canada.

Your obedient servant, (Sgd.) W. H. Sullivan, Canadian Government Official.

The Commissioner of Immigration, Ellis Island, New York.

[fol. 597] Ellis Island,
N. Y. H., November 10, 1926.

To the Honorable Secretary of Labor, Washington, D. C., through the Honorable Commissioner of Immigration, Ellis Island, N. Y. H.

HONORABLE SIR: I, Gaetana Simmonelli, arrived at Ellis Island on October 23, 1926 on the S. S. Conte Rosso, accompanied by my two children—Rocco De Santis, age 4 years, and Federico De Santis, age 3 years. We are destined to my husband, Amato De Santis, who resides in the city of Windsor, Ontario, Canada. My said husband is a citizen of Canada.

We were excluded by a Board of Special Inquiry held at Ellis Island on November 3, 1926, because my child, Rocco, was certified with ringworm of the scalp. Our passports bear the transit vise of the American Consul in Italy, and my husband had secured permission for me and my children to be permitted to come to Canada. If my son Rocco, had not been found to be afflicted with ringworm of the scalp we would have been admitted to join my husband in Canada without any trouble.

I am anxious to have my son treated in the Ellis Island hospital and cured of the disease with which he is afflicted, [fol. 598] and I am ready and willing to deposit cash in the amount of $165.00 to pay for the first two month's treatment. I understand that this disease is easily cured, and that it probably will not take two months. But should it take longer to cure him, my husband will deposit a bond to guarantee any further payments required. I am attaching hereto the affidavit of my said husband Amato De Santis.

My husband has made all preparations to receive us, and has gone to considerable expense to bring us to Canada. It would be a case of extreme hardship and financial loss to us if we have to return to Italy. We pray, therefore, that treatment be granted to my son, Rocco De Santis, and that I and my child, Federico, be allowed to proceed to our destination in Canada. When the child, Rocco, is cured my husband will come to Ellis Island for him.

Respectfully submitted.

Simonelli Gaetana.

[fol. 599] (Copy)

PROVINCE OF ONTARIO,
County of Essex, To wit:

In the Matter of ROCCO DE SANTIS, FEDERICO DE SANTIS, and GAETANA DE SANTIS

Affidavit of A. De Santis

I, Amato De Santis of the City of Windsor in the County of Essex, Employee of The Dominion Forge and Stamping Company Limited make oath and say:

(1) I am the husband of the above named Gaetana De Santis and the father of the above named Rocco De Santis and Federico De Santis.

(2) I have arranged with the Department of Immigration of the Dominion of Canada for the admission of my said wife and my said two children to Canada to live with me in the City of Windsor in the County of Essex and Province of Ontario, but I have recently been advised that owing to the fact that the younger of my two sons, namely Rocco De Santis, is infected with ringworm the Immigration authorities of the United States of America have refused to allow my said wife and my said two children to enter the United States and to pass through the United States to Windsor, Ontario, fearing some spread of the infection which the said Rocco De Santis has contracted.

[fol. 600] (3) I am willing and anxious to have my said wife and my said two children with me in Windsor. I have rented a house and have bought a lot of furniture in preparation for my said family, and I will be put to a great financial loss if they do not arrive to say nothing of my disappointment and the inconvenience to which I have been put.

(4) I am also ready and willing to have my said son Rocco treated in a hospital on Ellis Island, and I am ready and willing to pay the expenses of such treatment and am ready and willing to furnish a cash bond in the sum of

$200.00 as a guarantee that all payments for hospital and for treatment will be met promptly and will be paid.

(Signed) Amato De Santis.

Sworn before me at the City of Windsor, in the County of Essex, this 4th day of November, A. D. 1926. (Signed) S. Meconi, a Notary Public in and for the Province of Ontario.

[fol. 601] PLAINTIFF'S EXHIBIT 17

55445/410

April 7, 1925.

Commissioner of Immigration, Ellis Island, N. Y. H.:

Reference is made to your letter of March 17th, No. 98926/503, relative to proposed fine against the S. S. Conte Verde, arriving on November 29, 1924, for bringing to the United States the alien Renzo Nelli, who was found to be an imbecile. In the opinion of the examining Public Health Surgeons, the existence of this mental defect might have been detected by means of a competent medical examination at the foreign port of embarkation.

The Line protests against the imposition of a fine, on the ground that this passenger is the son of an American Citizen, who applied for a visa through official channels. It contends that a visa cannot be granted, under the law, to an alien known to be inadmissible to the United States and that, in the application for visa, the father set forth that his son was feebleminded and epileptic. It points out that special authorization for the issuance of the visa was given in this case, and that all concerned knew that the alien was mentally subnormal; that it accepted him for passage in the belief that, through the issuance of the visa under the conditions stated, the alien would be admitted, and that it would be a miscarriage of justice to impose a penalty. This protest has been given the most earnest consideration. [fol. 602] The sole function of the Bureau is to examine the statements contained in the application submitted by the relative of the immigrant in respect to whom the petition is made, for the purpose of determining whether the

prospective passenger may be admitted as a non-quota immigrant under subdivision (a), Section 4, or is entitled to preference as a relative under Section 6 of the Act of May 26, 1924, and thereafter to inform the Secretary of State of the decision. The expression of an opinion however, in that connection cannot, in any way, be construed as a determination of the admissibility of the alien under the Act of February 5, 1917, the latter question being solely for the determination of the immigrant inspectors stationed at the port of arrival, or by the Secretary of Labor on appeal where such a review is allowed by statute. The American Consul, however, can refuse to issue a visa, under his instructions and the wording of the law but his failure to refuse a visa in this case does not, in the Bureau's opinion, relieve the transportation company from the penalty set forth in the law for transporting an alien found to be afflicted with the defect mentioned in connection with this alien. There is nothing in the record to show that the Line failed to show good faith in this instance, but it most assuredly has violated the express prohibitions of the law in that it did transport to this country an alien who was an imbecile; who was found inadmissible, and deported.

It is felt that the existence of this defect might have been detected at the foreign port by means of a competent [fol. 603] medical examination. In fact, the Line admits knowing that the alien was afflicted as stated.

In the premises it is impossible, under the law to reach any conclusion other than that the penalty in this case must be imposed. You are directed, therefore, to take appropriate action whereby the sum of $1,000 may be covered into the Treasury as an immigration fine on account of this alien. The amount of passage is to be returned to the alien's father, Hugo Nelli, 2051 West Harrison Street, Chicago, Illinois.

G. E. Tolman, Assistant Commissioner General.

Approved.

E. J. Henning, Assistant Secretary.

JWB. OWM. LLR.

[fol. 604] Notice of Liability for Fine on Account of Bringing Diseased or Mentally Afflicted Aliens to the United States

U. S. Department of Labor, Immigration Service

Office of Port of ——

No. 98926/503

February 5, 1925.

To Lloyd Sabaudo Line, Owner of the Vessel Conte Verde, 11/29/24 (master, agent, owner, or consignee), 3 State Street, New York City:

You are hereby notified that the certificate of the examining surgeon, based upon a physical and mental examination of the alien whose name is shown herein, indicates that a fine should be imposed under the provisions of Section 26 of the "Immigration Act of 1924," or Section 35 of the Immigration Act of February 5, 1917.

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed thirty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the Collector of Customs at this port, prior to her sailing, [fol. 605] the sum indicated below as security for the payment of the said fine should it be imposed.

Name of alien: Nelli, Renzo, 16-M, Single, Italian.

Passage refund: $212.63.

Amount required to be deposited: $1,000.

Defect or disability upon which fine is imposed: Imbecile.

For the Commissioner:

W. W. Brown, Inspector in Charge, Law Division.

HCS.

Received the above notice Feb. 13, 1925, at Time — M.

Lloyd Sabaudo, per —— ——.

Witness: Nathan Chapitz.

[fol. 606] U. S. Department of Labor, Immigration Service

Before a Board of Special Inquiry Held at Ellis Island, New York Harbor, N. Y., December 5, 1924

HC 28

Present: Messrs. W. J. Zucker (Chmn.), O'Connor and Wood; Interpreter: Mrs. Yovtcheff.

Names of Aliens: Nelli, Renzo, 16 M, single, Italy-North, Italian.

Unable to read; LPC. Ins. Thos. King.

SI 38, SS Conte Verde, Lld. Sab. Line, Nov. 29, 1924 II Cab.

Brought to Ellis Island December 1, 1924.

To Hospital December 1.

Medical certificates 5591 3067.—This is to certify that the above described person has this day been examined and is found to be afflicted with Ademona Sebacem (face).—Dr. Waugh.

This is to certify that the above-described person has this day been examined and is found to be an imbecile. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation.—Drs. Weldon & Loughran.

[fol. 607] The alien being unable to answer intelligently the questions put to him, the witness is called upon to give the information.

Witness, duly sworn, testified in English:

Q. What is your name?
A. Nellie Nella.
Q. What is your age?
A. 21.
Q. Are you a citizen of the U. S.?
A. Yes, by my father's naturalization.
Q. Where do you live?
A. 2051 W. Harrison St. Chicago, Ill.
Q. Did you come on the ship with your brother Renzo?
A. Yes.
Q. This is your brother present?
A. Yes.

Q. Where did you embark?
A. Genoa, Nov. 18.
Q. Who else came with you?
A. My father.
Q. Where was your brother born?
A. Vellano, Lucca, Italy, where I have an uncle 77 years of age, Settimo Salvatore.
Q. Can your brother read?
A. No.
Q. Who paid his passage here?
A. Father.
Q. What is his occupation?
A. None.
Q. Was he ever in U. S.?
A. No.
Q. Where is he going?
A. He now come to live with the family at 2051 West Harrison Street, Chicago, Ill.
Q. Has he money?
A. No.
Q. Has your father his ticket?
A. Yes.
Q. He comes to make his permanent home here?
A. Yes.

Presents Italian passport issued at Lucca, Italy, October 14, 1924, and Nonquota Immigration visa 180 issued Octo- [fol. 608] ber 23, 1924 by immigration consular service at Leghorn Italy, under Sec. 4A Act of 1924, signed J. B. Jackson, Consul, with notation. Petition approved by Labor Department under date of August 18, 1924, and American Consul at Leghorn authorized to grant nonquota visa. Also instructed by Dept. of State under date of Sept. 3, 1924 to grant nonquota visa. In the application for the visa is a notation: Applicant is feeble minded and slightly epileptic. Application is signed by Hugo Nellie, father, for Renzo Nelli. Application for visa dated October 23, 1924.

Q. Was he ever debarred or deported?
A. No.
Q. When did you and your father leave here?
A. May 3, 1924, SS. Leviathan to bring my brother to U. S.

Q. Did you have your brother examined by medical officers abroad?

A. Yes.

Q. Have you any idea why the consul was authorized to issue a visa to your brother, it appearing in the application for the visa that he is feeble minded and epileptic?

A. No, we thought perhaps it was because we said that there was nobody over there to take care of him and because we intend to stay in the U. S. permanently. We went to the consulate at Leghorn and the consul at first refused to issue a visa for the boy because of his condition. Then we sent a petition to Washington together with a medical certificate showing that my brother was feeble minded and epileptic and Washington thereupon authorized the consul to issue the visa.

Q. Was your brother ever in any institution?

A. Yes, in Institution Umberto the First in Florence, Italy, about two years ago.

[fol. 609] Q. Is it a charitable institution?

A. No, my father paid 10 lires a day and bought his clothes and paid all extra charges.

Witness, duly sworn, testified:

Q. What is your name?

A. Hugo Nelli.

Q. Address?

A. 2051 West Harrison St. Chicago, Ill.

Q. You appear in behalf of your son?

A. Yes.

Q. Is this your son present?

A. Yes.

Q. Did you come on the ship with your son and daughter?

A. Yes.

Q. When did you leave here?

A. May, 1924.

Q. How long did you live in this country?

A. I was here the first time in 1903 and returned in 1910, and was here for 14 years on the last occasion.

Q. Are you a citizen?

A. Yes.

Shows Naturalization Certif. 841840 in name of Hugo Nelli, dated Nov. 8, 1917, Supreme Court, Chicago, indicat-

ing name of his wife as Cesira, residing with him. Minor children Humbert in U. S.; Nella residing with him, and Renzo residing in Italy.

Q. What is your business? Retired at present, I was in the restaurant business, am temporarily retired.

Q. How much are you worth?

A. $8,000 or $9,000, and I have property.

[fol. 610] Q. How much cash have you with you?

A. $200.

Q. How much money have you in all?

A. $1,000 in mortgage bonds on property in Chicago.

Q. Do you own property?

A. Yes, the house I live in worth $8,000, mortgage for $2,000.

Q. What else have you?

A. Nothing.

Q. How much cash have you?

A. $2,000.

Q. How many children have you in U. S.?

A. Married son in Chicago, and this daughter present.

Q. Is your wife in Chicago?

A. Yes.

Q. Why did you leave U. S.?

A. To bring my son here as he has nobody there.

Q. With whom has he been living?

A. Wife's uncle Settimo Salvatore.

Q. Have you other relatives in Italy?

A. Cousins.

Q. Name one?

A. Pietro Minuti Marginoni, in Lucca, Italy.

Q. Your daughter stated that the American Consul at Leghorn Italy at first refused you a visa for your son but you sent a petition to Washington containing a certificate that he was feebleminded and epileptic and authorization came from Washington to bring him, is that correct?

A. Yes.

Q. How long has your son been suffering from epilepsy?

A. About five years.

Q. How often does he have epileptic fits?

A. Don't know.

Q. What did the steamship officials say to you about him?

A. He said I may have trouble, but as the American consul gave a visa to him he might get through.

[fol. 611] Q. Did you have to deposit a sum of money with the steamship company to indemnify them in the event of his deportation?

A. No.

Q. Your son is certified as being an imbecile, which renders him mandatorily excludable and there lies no appeal to the Secretary of Labor. You have a right to appeal to a Board of Medical Examiners composed of U. S. Public Health Surgeons and you have a right to have a physician of your own choosing and at your own expense present during the re-examination of your boy; do you wish to appeal to such a board?

A. No. I am aware of his condition and decline to appeal.

Q. If your boy is returned whom will he be returned to?

A. Salvatore Settimo, Vellano, Lucca, Italy.

Q. How old is your son?

A. He was born Sept. 24, 1908.

Q. What did you pay for his passage from Genoa to New York?

A. 5015 lire.

Q. What did you intend to do with your son here?

A. Live with the family.

Q. Would you send him to an institution?

A. No.

Q. Was he in an institution in Italy?

A. Several years ago, for 2½ years in Florence Italy, for deficient children.

Q. Was it a charitable institution?

A. No, I paid 10 lire a day.

Q. Why was he taken out of the institution?

A. They did not take care of him.

[fol. 612] Alien recalled:

Q. What is your name?

A. Renzo Nella.

Q. How old are you?

A. 15.

Q. Where were you born?

A. Vellano.

Q. Can you read?

A. Yes. Alien given test class 4,5743, Italian, consisting of between 30 and 40 words in common use.

To the Father:

Q. In the event of your boy's deportation are you to make any arrangements for some one to take care of him on the voyage in view of the fact that he appears to be helpless?

A. The ship's doctor will take care of him.

Q. How will he be delivered from the port of embarkation to his home in Italy?

A. I will wire the wife of Settimo Salvatore who will come to meet him.

Q. Your son is certified as being an imbecile and this board must deny him admission and there is no appeal. Have you anything further you wish to say?

A. Washington knew the boy's condition, nevertheless they authorized the visa for him. The boy's clothing has been changed and we want him to be given back his own clothes as this is no suit to travel in. We will put up a bond that he would not become a public charge.

Mr. Wood: Basing the motion on the medical certificate, I move to exclude as an imbecile and also as unable to read.

Mr. O'Connor: I move that the alien be excluded as a person certified to be an imbecile.

[fol. 613] Mr. Zucker: I second the motion of Mr. O'Connor.

To the Father:

Your son has been excluded for the reason, as stated, and will be returned to the port whence he embarked at the expense of the steamship company which brought him here, in the same class in which he arrived.

In addition the Secretary of Labor may order your son's passage money refunded, in which event it will be forwarded to the foreign address given. Do you understand?

A. Yes.

Harry Chrystall, Secy.

Lloyd Sabaudo, Fast Italian Mail Line, General Agency for United States and Canada

Col. Dr. M. Serrati, General Manager

Cable Address: "Sabaudo," New York

3 State Street,
New York, March 13, 1925.

Your File No. 98926/503.

Hon. Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

SIR: We are in receipt of your "Notice of Liability for Fine" dated February 5, 1925, and served on us February [fol. 614] 13, 1925, in the case of Nelli Renzo who arrived on our SS. "Conte Verde" November 29, 1924.

A bond has been filed with the Collector of Customs to guarantee payment, should the fine be imposed, of the sum of $1,212.63 as follows:

Proposed Fine for bringing an Imbecile	$1,000 00
Proposed refund of passage	212.63
Total	$1,212 63

We desire to protest the imposition of any fine in this case, and beg leave to submit hereunder the following stated facts:

1. That in bringing the above named alien to the United States our Company did not violate the law. We accepted him because we were assured that the Department of Labor and the Department of State had issued special instructions to permit him to come to the United States.

2. That the record shows that the alien is the son of Ugo Nelli, an American citizen residing in Chicago. The record further shows that Mr. Nelli filed a petition through the American Consul at Leghorn, Italy, to have a non-quota visa issued to his son, and to the petition he attached a medical certificate showing that his son was feeble-minded and epileptic. Notwithstanding this fact, the Department of Labor approved the petition, and authorized the issu-

ance of the non-quota visa, in spite of the fact that the Immigration Act of 1924 forbids the issuance of an immigra-
[fol. 615] tion visa to inadmissible aliens. Paragraph (f) of Section 2 of the said Act, provides:

"No immigration visa shall be issued to an immigrant if "it appears to the consular officer, from statements in the "application or in the papers submitted therewith, that the "immigrant is inadmissible to the United States under the "Immigration Laws, nor shall such immigration visa be "issued if the application fails to comply with the provisions "of this Act, nor shall such immigration visa be issued if "the consular officer knows or has reason to believe that the "immigrant is inadmissible to the United States under the "immigration laws."

3. That the record shows further that the Department of Labor was well aware of the alien's condition when it approved the petition. We beg to quote herewith a telegram sent to Mr. Ugo Nelli by the Hon. Commissioner General of Immigration on December 8, 1924, wherein this fact is admitted by him:

"Commissioner Ellis Island reports Nelli Renzo manda-"torily excluded because certified to be an imbecile stop "when non-quota visa was authorized State Department was "informed that the child being epileptic and mentally de-"fective was evidently within a class which is mandatorily "excluded under the General Immigration Law stop Record
[fol. 616] "shows this information was transmitted to Con-"sul stop Aliens for whom non-quota visa is authorized "under new immigration law cannot be admitted if found "inadmissible under General Immigration Law as appar-"ently the situation in this case stop Bureau regrets it can "be of no assistance."

4. That the record shows further that the American Consul at Leghorn, Italy, informed Mr. Ugo Nelli that he had received "special authorization" from the Government to issue a non-quota visa to the above named alien. The letter in question is quoted herewith in full:

"American Consular Service,
"Livorno, Sept. 22, 1924.

"Mr. Ugo Nelli, Vellano, Lucca:

"The American Government has authorized me to issue "an immigration visa extra quota for your son, Renzo, in "order that he may proceed to the United States with you "to establish himself in Chicago where you are domiciled.

"Your son should, therefore, present himself here to- "gether with you and bring with him his Italian passport "valid for the voyage to the United States and two photo- "graphs. The visa tax is $10.00.

"No sooner than your son will present himself here with "the passport I will issue to him an immigration visa extra [fol. 617] "quota in accordance with a special authorization "of my Government.

"I would advise you to present this letter to the competent "Italian authorities to facilitate the issuance of passport.

"With respect,

"(Signed) Jesse B. Jackson, American Consul.

"811.1.
"FCG."

From the above enumerated facts it must be clear to the Hon. Secretary of Labor that our Company did not violate the law in this case. We accepted the alien because we were led to believe by the American Consul at Leghorn that the Government had made a special ruling in this case, and had sent "special authorization" to permit him to join his family in Chicago.

In view of the fact that a mistake was made first of all by the Department of Labor and then by the Department of State in approving the petition when they were fully aware of the alien's physical and mental condition, and secondly by the American Consul at Leghorn who should have refused to issue the visa under Section 2, Paragraph F of the Immigration Act of 1924, above quoted. We believe, therefore, that in view of the unusual circumstances in this case it would be a miscarriage of justice to impose a fine of $1,000—plus the passage amounting to $212.63, against our Company.

We request, therefore, that no fine be imposed, and that the Collector of Customs be instructed to cancel this fine [fol. 618] against us. Trusting that you will give this matter your worthy consideration, we remain,

Respectfully yours, Lloyd Sabauda, Agency in New York. M. Serrati, General Manager.

DAC:EA.

Western Union Telegram

Send the following message, subject to the terms on back hereof, which are hereby agreed to.

Dec. 1, 1924.

To Hon. W. W. Husband, Street and No. (or Telephone Number): ——, Commissioner General of Immigration, Place: Washington, D. C.:

I am an American Citizen and arrived on Steamer Conte Verde Saturday with my son Nelli Renzo age sixteen years my son is an alien having been born prior to my naturalization stop He is feebleminded and was allowed to sail as per your special instructions given in a letter addressed to Honorable Jesse B. Jackson American Consul at Livorno Italy stop Your letter specifically stated that you were aware of the fact that my son was feebleminded and epi- [fol. 619] leptic but you authorized American Consul to issue non quota visa stop my boy now detained Ellis Island and I am afraid he may be deported next Saturday stop As it was undoubtedly your intention to permit my son to come to live with me in Chicago I pray that you please instruct Ellis Island authorities to release boy to me stop As you will note from my petition for visa I am financially able to care for and support my son and I am ready to deposit bond to guarantee that he will never become a public charge stop My family all in Chicago my boy served in the Army during the war Please do what you can for me Thank you Please wire me care Lloyd Sabaudo Line 3 State Street New York

Ugo Nelli.

[fol. 620] Western Union Telegram

As this message is collect, the tolls will be charged to your account unless otherwise instructed.

Lloyd Sabauda, Dec. 9, 1924, New York.

The filing time as shown in the date line on full-rate telegrams and day letters, and the time of receipt at destination as shown on all messages, is Standard Time.

Received at ——.

1924 Dec 8 PM 10 26.

WC 784 99 Collect NL 4 Extra 1/71 Washington, D. C. 8.

Ugo Nelli, Care Lloyd Sabaudo Line, 3 State St., New York, N. Y., 740:

Commissioner Ellis Island Reports Nelli Renzo mandatorily excluded because certified to be an imbecile Stop When non quota visa was authorized State Department was informed that the child being epileptic and mentally defective was evidently within a class which is mandatorily excluded under the General Immigration Law Stop Record shows this information was transmitted to consul stop Aliens for whom non quota visa is authorized under new Immigration Law cannot be admitted if found inadmissible under General Immigration Law as apparently the situation in this case Stop Bureau regrets it can be of no assistance

W. W. Husband, Commissioner General of Immigration.

[fol. 621] In United States District Court

[Title omitted]

Order Settling and Allowing Defendant's Bill of Exceptions

Upon the annexed consent, and on motion of George Z. Medalie, United States Attorney, Attorney for the defendant, I have settled, allowed and signed the foregoing, together with all of the exhibits offered or received in evidence, as the defendant's Bill of Exceptions in the within action.

Dated New York, N. Y., December 7th, 1931.

Robert P. Patterson, U. S. D. J.

Consented to.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Plaintiff.

[fol. 622] In United States District Court

[Title omitted]

Petition for Appeal

Now comes the defendant, Philip Elting, Collector of Customs of the Port of New York, and says that on the 6th day of March, 1931, the United States District Court for the Southern District of New York entered judgment herein against him in the sum of $3,146.65 and that by the said judgment certain errors were committed to the prejudice of the defendant, all of which will more fully appear in the assignment of errors filed with this petition.

Wherefore the defendant prays an appeal from the said judgment to the Circuit Court of Appeals for the Second Circuit for the correction of the errors so complained of and for the allowance of the said appeal and for leave to prosecute the same and that a transcript of the record and the proceedings in this cause duly authenticated be forwarded to the [fol. 623] said Circuit Court of Appeals.

Dated New York, N. Y., June 4, 1931.

George Z. Medalie, United States Attorney for the Southern District of New York, Attorney for Defendant.

The above appeal is hereby allowed.

Dated New York, N. Y., June 4, 1931.

Wm. Bondy, U. S. D. J.

In United States District Court

[Title omitted]

Assignment of Errors

Now, comes the defendant, by George Z. Medalie, United States Attorney for the Southern District of New York, [fol. 624] his attorney, and says that the District Court of the United States for the Southern District of New York in rendering the judgment herein, dated March 6, 1931, in favor of the plaintiff and against the defendant, erred in the following respects, to wit:

First. That the Court erred in granting the motion of the plaintiff for a directed verdict as to the causes of action numbered "Ninth," Eleventh" and "Fifteenth" alleged in the complaint.

Second. That the Court erred in entering judgment in favor of the plaintiff in the sum of $3,146.45.

Third. That the Court erred in holding with respect to the "Ninth" and "Eleventh" causes of action alleged in the complaint that the aliens Rulo and DeSanctis had the right to come to the United States notwithstanding their diseased condition at the time of leaving Italy and that the plaintiff committed no wrong in bringing said aliens to the United States, even with notice of their ailments.

Fourth. The Court erred in holding with respect to the "Ninth" and "Eleventh" causes of action alleged in the complaint that because the said aliens Rulo and DeSantis were actually admitted to the United States the Secretary of Labor had no authority to impose fines upon the plaintiff for bringing them to the United States afflicted with ringworm.

Fifth. The Court erred in holding that where diseased or defective aliens are lawfully admitted to the United [fol. 625] States no fine for bringing them to the United States can be imposed upon the steamship company transporting them.

Sixth. The Court erred in holding with respect to the "Ninth" and "Eleventh" causes of action alleged in the complaint that the intention of Section 145, Title 8, U. S. C. A., is to permit the exaction of a fine from a steamship company only in cases where the alien has been excluded; and in holding that the portion of the fine equivalent to the passage money paid by the alien was indivisible from the portion of the fine imposable upon a steamship company for bringing to the United States aliens in violation of the provisions of Section 145, Title 8, U. S. C. A.

Seventh. The Court erred in holding with respect to the "Ninth" and "Eleventh" causes of action alleged in the complaint that the admission of aliens under Section 159, Title 8, U. S. C. A., does not lie in the Secretary's discretion and that aliens have an absolute right of admission to the

United States where the conditions specified in that section have been satisfied.

Eighth. The Court erred in holding with respect to the "Fifteenth" cause of action alleged in the complaint that the fine of $1,212.63 imposed on the plaintiff for bringing the alien Nelli to the United States should not have been imposed by the Secretary of Labor.

Ninth. The Court erred with respect to the "Fifteenth" cause of action alleged in the complaint in not holding that [fol. 626] the evidence before the Secretary of Labor established that the plaintiff and/or its officers were not warranted in the belief that in carrying the alien Nelli to the United States on their ship they were not committing an unlawful act in violation of the Immigration Laws of the United States.

Tenth. The Court erred with respect to the "Fifteenth" cause of action alleged in the complaint in not holding that the plaintiff and/or its officers should have been aware of the alien Nelli's ineligibility for admission to the United States notwithstanding the issuance of a visa for Nelli by the United States Consul in Italy, and in not holding that the plaintiff and/or its doctors should have been aware of the inadmissibility of Nelli to the United States as an alien mandatorily excludable under Sections 202, 209, 213 and 223, Title 8, U. S. C. A., and should have realized that any visa issued was inadvertently issued.

Eleventh. The Court erred with respect to the "Fifteenth" cause of action alleged in the complaint in not holding that the evidence before the Secretary of Labor established that prior to the sailing of the ship upon which the plaintiff transported Nelli to the United States, the plaintiff and/or its officers had doubts as to whether Nelli would be admitted into the United States notwithstanding the issuance of a visa for him by the United States Consul in Italy.

Twelfth. The Court erred in denying the defendant's motion for a directed verdict as to the "Ninth," "Eleventh" [fol. 627] and "Fifteenth" causes of action alleged in the complaint, and erred in not granting the defendant's motion to set aside the verdict directed by the Court in favor of the plaintiff as to the "Ninth", "Eleventh" and "Fifteenth" causes of action alleged in the complaint.

Thirteenth. The Court erred in not entering judgment for the defendant dismissing the complaint as to all of the causes of action alleged therein by the plaintiff.

Wherefore the defendant prays that the judgment herein in favor of the plaintiff may be reversed and held for naught and that the said defendant may be restored to all things which he has lost by reason of the said judgment.

Dated New York, N. Y., June 4, 1931.

George Z. Medalie, United States Attorney for the Southern District of New York, Attorney for the Defendant.

[fol. 628] Citation, in usual form, omitted in printing.

[fol. 629] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

ORDER SETTLING PAPERS TO BE PRINTED IN TRANSCRIPT OF RECORD ON CROSS-APPEAL

Whereas, Lloyd Sabaudo Societa Anonima per Azioni, plaintiff-appellee in this cross-appeal, has heretofore taken an appeal from a judgment entered on the 6th day of March, 1931, whereby its complaint was dismissed as to causes of actions numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14, and the calendar number of said appeal is No. 125; and

Whereas, Philip Elting, defendant-appellant herein, has taken cross-appeal from said judgment entered March 6, 1931, in so far as it awarded to Lloyd Sabaudo Societa Anonima per Azioni the sum of $3,146.45, and said Philip Elting is now about to file his Transcript of Record on cross-appeal; it is

Ordered that for his Transcript of Record on cross-appeal he be required to print and file only Plaintiff's Ex-
[fol. 630] hibits 11, 13, and 17, being part of his Bill of Exceptions, Petition for Appeal, and Order of Allowance, Assignment of Errors, Citation on Appeal, Stipulation and

Order Settling Bill of Exceptions, together with this Order, and it is

Further ordered that pages 43 to 289, inclusive, of the Transcript of Record on Appeal, heretofore filed by Lloyd Sabaudo Societa Anonima per Azioni, being a part of its Bill of Exceptions identical with Philip Elting's Bill of Exceptions herein, as well as all of the depositions ordered by this Court by order, dated July 16, 1931, to be considered part of the Transcript of Record of Lloyd Sabaudo Societa Anonima per Azioni, without being printed therein, may be also considered and hereby are deemed to be part of the Transcript of Record on cross-appeal of Philip Elting with the same force and effect as though printed therein.

Dated New York, December 7th, 1931.

Manton, Circuit Judge.

Entry of the foregoing order is hereby consented to.

Dated New York, December 5th, 1931.

George Z. Medalie, United States Attorney, Attorney for Defendant-Appellant. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Plaintiff-Appellee.

[fol. 631] In United States District Court

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the United States District Court for the Southern District of New York, in the above-entitled action, as agreed upon by the parties.

Dated New York, N. Y., December 31, 1931.

George Z. Medalie, United States Attorney, Attorney for Defendant-Appellant. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Plaintiff-Appellant.

[fol. 632] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 633] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1931

No. 125

Argued January 6, 1932. Decided February 1, 1932

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI, Plaintiff-Appellant,

v.

PHILIP ELTING, Collector of Customs of the Port of New York, Defendant-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Before Manton, Augustus N. Hand, and Chase, Circuit Judges

OPINION

From a judgment of the District Court for the Southern District of New York in an action to recover fines imposed under 8 U. S. C. A. § 145, both parties appealed.

This suit was brought to recover fifteen fines imposed by the Secretary of Labor under section 9 of the Immigration Act of 1917 as amended by section 26 of the Act of 1924 (8 U. S. C. A. § 145) and paid to the defendant under protest.

The pertinent portion of the statute follows:

"It shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel, to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and

that the existence of such disease or disability mignt have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a livin as contemplated in section 136 of this title, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $250, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed."

The plaintiff is a steamship company that brought all these aliens to New York either from Genoa or from Naples. [fol. 634] When they arrived at New York and were examined at Ellis Island, as they did and were over a series of years from 1923 to 1927, inclusive, two of them were found to be feeble-minded; seven were suffering from disease of an excluding character; two were so diseased as to affect their ability to earn a living; one was blind with like effect on his earning power; one, who was suffering from a contagious disease, was allowed hospital treatment and admitted when cured; and one other so diseased was, after cure, permitted to enter in transit to Canada; one was an

imbecile. In all these cases it was certified by the examining physicians here that a competent examination abroad would have disclosed their condition at the time of embarkation. The blind alien claimed to be coming here to study, and had a nonquota visa, but had not been enrolled in any institution of learning in this country. The imbecile also had a nonquota visa which had been issued after a petition had been presented to the Secretary of Labor in which it appeared that the alien was feeble-minded and epileptic.

In the District Court trial was had by a jury of one and judgment for the defendant was entered in all cases except that of the imbecile, who was excluded, of the diseased alien who was admitted after cure, and of the diseased alien admitted after cure for transit to Canada. In these three cases, the plaintiff had judgment.

Kirlin, Campbell, Hickox, Keating & McGrann, and Gaspare M. Cusumano, all of New York City (Delbert M. Tibbetts, of New York City, of counsel), for plaintiff-appellant.

George Z. Medalie, U. S. Atty., of New York City (Walter H. Schulman, Asst. U. S. Atty., of New York City, of counsel), for defendant-appellee.

CHASE, Circuit Judge (after stating the facts as above):

At the trial below, the plaintiff offered evidence, not presented to the Secretary of Labor, in support of its claim that the aliens had been subjected to a competent examination abroad and its exclusion is now claimed to have been erroneous. Such a contention fails to give effect to the language of the statute and the decision in Oceanic Steam Navigation Company v. Stranahan, 214 U. S. 320, 29 S. Ct. 671, 53 L. Ed. 1013. The basis for the imposition of such fines is two-fold, (1) the fact of bringing aliens to this country who belong in the classes mentioned; (2) the determination by the Secretary of Labor that the existence of the cause of exclusion might have been detected by a competent examination at the time of foreign embarkation. The fact that the aliens had been brought to this country was not in controversy; neither was their condition when they arrived; and the only real issue of fact related to the decision of the Secretary of Labor on the question of detectability of the disability abroad. The plaintiff insists that it was entitled

to a trial de novo on this issue, reading the statute to mean that its liabilty to fines for infringement is dependent solely upon the decision of a court of competent jurisdiction as to the fact, as an absolute fact, of detectability by competent examination abroad. The government takes the position that the review of the decision of the Secretary of Labor is limited to determining whether it was arbitrary or capricious. We think the government is right in this regard, and that the exclusion of the offered evidence was not error. Under the decision in the Stranahan Case, supra, and that in Hampton & Co. v. United States, 276 U. S. 394, 48 S. Ct. 348, 72 L. Ed. 624, the power of Congress to confer upon an executive officer authority to enforce laws relating to matters exclusively within its control and imposing such reasonable fines for their infraction as Congress may see fit to permit to be exacted by such officer has been recognized. That is exactly what has been done in the law here involved. Determination of the fact of foreign detectability of an excluding condition has been left to what will satisfy the Secretary of Labor in that regard. This means that whatever the Secretary of Labor decides, provided his decision is neither arbitrary nor capricious, is final. Wallis v. United States (C. C. A.) 273 F. 509. Cases like In re Fassett, 142 U. S. 479, 12 S. Ct. 295, 35 L. Ed. 1087, and Ng Fung Ho v. White, 259 U. S. 276, 42 S. Ct. 492, 66 L. Ed. 938, are not in point. Here the plaintiff had a fair opportunity to present all its evidence to the Secretary of Labor, and, as his decision on the facts was well within the evidence, all rights the plaintiff had on that score have been protected.

Nor was it error to treat the certificates of the medical examiners as evidence of the facts as therein stated. They were reports of examinations made in the performance of their official duty, and were a part of the record before the [fol. 635] Secretary. United States ex rel. Fenerstein v. Tod (C. C. A.) 296 F. 127. Compare U. S. v. Day (C. C. A.) 33 F. (2d) 267.

Being justly satisfied that a competent examination at the time of embarkation would have shown that these aliens were all in excluded classes, the Secretary had no power to refrain from imposing the statutory fines upon proof that the aliens were examined abroad by competent doctors who failed to discover their actual condition. The statute re-

quires a fine whenever the Secretary is satisfied that a competent examination would have disclosed the condition of the alien. It takes no account of any mistakes an examiner might make and still be a competent man. The burden placed upon a steamship company transporting aliens to our shores is not satisfied by its employing competent examiners to make examination of aliens at the time of embarkation, but it is charged with whatever knowledge it would obtain from a competent examination of each alien at that time. Compare Chicago, Burlington & Quincy R. R. Co. v. U. S., 220 U. S. 559, 31 S. Ct. 612, 55 L. Ed. 582. These cases are unlike Compagnie Francaise de Navigation a Vapeur v. Elting (C. C. A.) 19 F. (2d) 773, and North German Lloyd v. Elting (C. C. A.) 54 F. (2d) 997, in each of which the quota or nonquota status of the aliens was involved and could be determined with finality only upon arrival here. Excluding disease or physical or mental defects could be discovered just as well abroad as in this country. Accordingly all the judgments in favor of the defendant are affirmed. North German Lloyd v. Elting (C. C. A.) 48 F. (2d) 549.

The two cases where diseased aliens were admitted when cured will be considered together, although one was in transit to Canada and one was not. There is much force to the claim of noninfringement of the statute where the alien is actually permitted to enter notwithstanding his condition. In Dollar S. S. Line v. Elting (C. C. A.) 51 F. (2d) 1035, we held that a diseased alien was not brought here within the meaning of the statute when brought to the port of New York en route by water to Cuba, although she had a transit visa and at least when she arrived at New York, if not before, made up her mind to apply for permanent entry. The question now before us was then expressly left open. These two aliens were admitted. The liability to fine of a steamship company for bringing aliens who are admitted was doubted in North German Lloyd v. Elting (C. C. A.) 48 F. (2d) 549; and in Compagnie Generale Transatlantique v. United States (C. C. A.) 51 F. (2d) 1053, we said that, where aliens were admitted, there was "strong reason" for holding the fine and the return passage money which the statute requires to be collected and given to the excluded alien an indivisible penalty. If the statute be interpreted literally, it may be said that a carrier becomes subject to

the penalty for bringing aliens to this country who are suffering from excluding physical or mental defects or disease ascertainable by competent examination at the time of embarkation regardless of their admission through the exercise of lawful discretion when they arrive in this country. Yet, if Congress had so intended, it is reasonable to believe that it would have said so and provided for a fine in instances where there was actual admission without including the return of passage money in the penalty. Surely there could have been no intent to enrich an excludable alien, admitted as an act of grace, at the expense of the carrier. That would have the effect of providing such aliens with free passage to this country whenever they were fortunate enough to secure admission in spite of their disabilities, and to put a premium upon attempts by them to get in under discretionary rulings. In our opinion, the fine and return passage money constitute one indivisible penalty, and that when aliens are actually admitted no penalty for bringing them here may lawfully be imposed under this statute. Compagnie Generale Transatlantique v. United States, supra; Company Norddeutscher Lloyd v. United States (C. C. A.) 213 F. 10. The judgments in these two cases are affirmed.

The imbecile was a boy 16 years old named Renzo Nella. His father was a naturalized American citizen. He and his daughter went from this country to Italy in May, 1924, to bring the boy back with them. Application for an immigration visa was made to the American consul at Leghorn and at first denied. Later, after application to the Department of State at Washington, which included a disclosure of the fact the boy was epileptic and defective, was made, a nonquota visa was authorized on September 3, 1924, to be issued to the alien. Issuance of the nonquota immigration visa was approved by the Department of Labor, and it was issued to Renzo Nella after an application dated October 23, 1924.

[fol. 636] When he arrived at New York, an examination having disclosed his excluding condition and the fact that it could have been detected by a competent examination at the time of foreign embarkation, he was excluded. Indeed, no point is made that the plaintiff lacked knowledge of his condition. It relied wholly upon the representation that the boy had been given special consideration and assumed that he would therefore be admitted because he had a visa.

Notwithstanding this, the plaintiff was bound to act with knowledge of the law and to know that it could not rely on an immigration visa to show that the alien was entitled to admission when he was in fact within one of the classes excluded. Possession of a visa left the alien's right to admission still dependent upon his ability to satisfy the requirements of the immigration laws. The Immigration Act of 1924 was then in effect, and expressly so provided. 8 U. S. C. A. § 202 (g); Chang Chan v. Nagle, 268 U. S. 346, 45 S. Ct. 540, 69 L. Ed. 988. The judgment in this case is reversed. A verdict for the defendant should have been directed and judgment entered thereon.

All judgments affirmed except that in the Nella Case. The judgment in that cause is reversed.

[fol. 637] In United States Circuit Court of Appeals, Second Circuit

Lloyd Sabaudo Societa Anonima per Azioni, Plaintiff-Appellant,

vs.

Philip Elting, as Collector, etc., Defendant-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Judgment—Filed Feb. 8, 1932

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be, and it hereby is, affirmed, except as to the Nella case, as to which the judgment is reversed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin.

[fol. 638] [File endorsement omitted.]

[fol. 639] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 640] Supreme Court of the United States

Order Allowing Certiorari—Filed May 23, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 885, Elting, Collector of Customs vs. North German Lloyd.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 641] In Supreme Court of the United States

Order as to Printing and Withdrawal of Depositions—Filed June 24, 1932

On the subjoined consent of the attorney for the respondent, and on motion of Delbert M. Tibbetts, of counsel for the Petitioner, for good cause, it is

Ordered that the depositions offered in evidence upon the trial of this case in the United States District Court for the Southern District of New York need not be printed and incorporated in the printed transcript of record herein, but an original and one carbon copy of said depositions may be deposited with the Clerk of this Court, and upon being so deposited, shall be taken and considered by this Court as a part of the transcript of the record, with the same force and effect as if printed in full and incorporated in the printed transcript of record.

Further ordered that upon final termination of these [fol. 642] proceedings either of the parties may withdraw from the office of the Clerk of this Court the depositions and copy thereof so deposited.

Done at Washington, D. C., this 14 day of June, 1932.

Charles E. Hughes, Chief Justice.

Entry of the foregoing order is hereby consented to.

Dated Washington, D. C., —— —, 1932.

Thomas D. Thacher, Solicitor General of the United States, Attorney for Respondent.

[fol. 643] [Endorsed:] U. S. District Court, Southern District of N. Y. Lloyd Sabaudo Societa Anonima per Azioni, Petitioner, against Philip Elting, Collector, &c., Respondent. Order. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Petitioner, 27 William Street, New York, N. Y.

[fol. 644] [File endorsement omitted.]

Endorsed on cover: File No. 36,716. U. S. Circuit Court of Appeals, Second Circuit. Term No. 48. Lloyd Sabaudo Societa Anonima per Azioni, petitioner, vs. Philip Elting, Collector of Customs of the Port of New York. Petition for a writ of certiorari and exhibit thereto. Filed April 29, 1932. File No. 36,716.

FILE COPY

OCT 8 1932

Supreme Court of the United States

OCTOBER TERM, 1932. No. 48.

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI,
Petitioner,

against

PHILIP ELTING, Collector of Customs of the Port of New York,
Respondent.

BRIEF IN BEHALF OF THE PETITIONER.

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THIRD POINT:

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Supreme Court of the United States

OCTOBER TERM, 1932. No. 48.

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI,
Petitioner,

against

PHILIP ELTING, Collector of Customs of the Port of New York,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF IN BEHALF OF THE PETITIONER.

This case comes before the Court on a Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit.

Fifteen causes of action for recovery of fines imposed under the Immigration Laws were stated (R. 1-21). Twelve were dismissed. On cross appeals the Circuit Court of Appeals dismissed a thirteenth cause of action.

JURISDICTION.

The order on mandate below was entered on February 8, 1932 (R. 415).

Jurisdiction of this Court is provided by 28 U. S. C. s. 347 (a).

Certiorari was granted on May 23, 1932 (R. 416), 286 U. S. 539.

Opinions Below.

The opinion of the Circuit Court of Appeals was written by Judge Chase, Judges Manton and A. N. Hand concurring (R. 409-415). It is reported 55 F. (2d) 1048, 1932 AMC 244. The opinion of District Judge Patterson appears at pages 350-361 of the record and is reported 45 F. (2d) 405, 1930 AMC 1620.

Statutes Involved.

The statutes involved are Section 9 of the Immigration Act of February 5, 1917 and the same section as amended and re-enacted in the Immigration Act of 1924 (8 USC Sec. 145, 39 Stat. 880, 43 Stat. 166). The only change material to this case made in 1924 was an increase in the amount of the fines. The Statute as amended provides in part:*

"That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeblemindedness, epilepsy, constitutional psychopathic inferiority,, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall

* See Appendix for complete text.

pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a living, as contemplated in section 3 of this act, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $250, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed. * * *"

The Facts

A case which is illustrative of the facts in these cases is the case of Giuseppe Fusco (10th cause of action). As disclosed by the record of the proceedings before the Secretary of Labor (R. 277-292), Fusco, aged 53, resided in Mezzano, Caserta, Italy, with his wife and six of his 8 healthy children. A son, an American citizen (R. 289), in comfortable circumstances (R. 291), and a married

daughter, resided in Phoenixville, Pennsylvania. In the summer of 1926 Fusco decided to return to the United States, in which he had resided for 15 years, since 1901, having freely entered and left the country 5 times, to visit his American children (R. 288).

He was examined by surgeons of the Royal Italian Emigration Service in Naples, found free from disease or any symptoms of disease, and was granted an Italian passport on September 20, 1926 (R. 282, 286). The American Consul at Naples issued to Fusco a quota visa on October 1, 1926, to which was attached a certificate of a competent practicing physician who enjoyed the confidence of the American Consul, which certified that Fusco was free from any contagious disease or any other physical defect which might debar him from admission to the United States (R. 282, 207, 209). This visa and medical certificate came into the possession of the Secretary of Labor by virtue of his rules (Rule 3, subdivision G, par. 3, Regulations, July 1, 1925; Appendix, *infra*). Such a visa under the 1924 Act is a separate document based upon a verified application by the alien of the character set forth in the record, page 210 (Act Secs. 2 and 7, 8 U. S. C. 202, 207).

Just before embarkation Fusco was examined by the line's medical examiners, who also found him to be free from tuberculosis or any symptoms of the disease (R. 282).

Fusco embarked on petitioner's *S. S. Conte Rosso* at Naples on October 13, 1926, and arrived at New York October 23 (R. 288).

The foregoing facts were supplemented by depositions and the testimony of witnesses (R. 27-68, 70-76, 80-109, 109-116) offered at the trial, which established:

That at Naples the petitioner maintained regularly two and sometimes three resident physicians, whose duty it was

to examine all aliens seeking passage to the United States; that at both Naples and Genoa, the only ports of embarkation, a place had been established, called the Emigrant House, properly equipped for such examinations, and at that place the company physicians under the supervision of a doctor attached to the Royal Italian Emigration Service, made careful physical examinations of all immigrants the day before embarkation. At these examinations notations were made of any case suspected of disease or disability, and on the day of sailing all immigrants were again examined at the pier, special attention being given to the cases noted as doubtful.

The final examination at the pier was conducted on the day of sailing by a commission created by Italian Emigration Laws, which consisted of at least three doctors and usually two laymen. At that examination every person found to be afflicted with or even suspected of being afflicted with any disease or disability which might bar his admission to the United States, was refused permission to sail. This was no empty formality as is shown by the numerous rejections referred to in the testimony of Dr. Valenzi (R. 39-43).

In addition to the foregoing examinations each alien, as a prerequisite to the granting of a visa, had been required by the American Consul to present a medical certificate issued by a physician specially designated by the Consul to make such examinations and all quota immigrants had been required by the Italian Law to undergo physical examinations as a prerequisite to the issuance of passports.

The result was that before embarkation, every quota immigrant had been submitted to four physical examinations and every non-quota immigrant had undergone three such

examinations (see depositions of Doctors Musu, Izzo and Reale on deposit with the Clerk of this Court).

The examinations at the Emigrant House included clinical examinations by such means as the stethoscope, microscope, magnifying glass, Wasserman test, &c., by outside specialists, to whom the immigrants were sent, whenever the examining doctor suspected that a disease might exist which might be discovered by such methods (Deposition, Dr. Reale, pp. 10-13).

These examinations were conducted in such a manner and with such minuteness that they would have disclosed the existence of any disease or disability which would bar admission to the United States if the disease or disability existed at that time (Deposition, Dr. Baldovino, pp. 8-9). In reporting to the Italian Emigration Service on the effectiveness of such examinations Dr. Baldovino said:

"No sick man, suffering from an infectious disease, passes unobserved through the various tests of which the examination is composed. The sifting of those fit to embark is a sure one."

The foregoing precautionary measures have been in effect and practiced by petitioner for many years and were designed to meet the requirements of the immigration laws of the United States beginning with the Act of 1903, as construed by this Court in the case of *Oceanic Steam Navigation Company* v. *Stranahan*, 214 U. S. 320, and by the report of the Senate Committee, referred to in that case, in reporting on the Act of 1903 which, among other things, said that the provisions of the law leave in the hands of Steamship Companies "the power to escape even a risk of the fine being imposed, since they can refuse to take on board even the most doubtful case until certified by a competent medical authority to be entirely cured."

In this practice the petitioner had the full cooperation of an Italian law relating to the subject of emigration and of the Italian Emigration Service set up thereunder for the purpose of avoiding the embarkation of emigrants who were not physically fit to embark, including those who might not meet with the requirements of the American Immigration Laws. This cooperation went to the extent that doctors attached to the Italian Emigration Service were regularly assigned to the Immigrant houses to supervise all examinations by doctors employed by Steamship Companies. The Italian law also laid upon the Steamship Companies the cost of repatriation and compensation for loss of time of any alien rejected upon arrival in the United States (Deposition of Eugenio Verando filed with the Clerk of this Court, pp. 1 to 10, inc.). It was in pursuance of this general policy that the aliens in this case were subjected to thorough examinations jointly by doctors of the petitioner and of the Italian Emigration Service, with whose conclusions the two doctors at Ellis Island so completely disagreed.

The doctors who examined these immigrants, and their qualifications, were as follows:

Genoa.

1. *Candido Baldovino,* practitioner of medicine and surgery since 1899. Graduate University of Pavia. Lieutenant Colonel in the Royal Italian Navy, director of the Emigrant House in Genoa from 1926 to 1928. See his deposition, pages 4 to 9, inc.

2. *Dr. Giovanni Valenzi.* Graduate University of Turin. In practice since 1911. Ship's surgeon for Lloyd Sabaudo since January, 1921. R. 27 to 29, inc.

3. *Dr. Pietro Dandini De Sylva.* Graduate medical school, University of Rome. In practice since 1915. Surgeon on vessels of Lloyd Sabaudo from 1922 to 1926. R. 81-82.

4. *Dr. Curzio Valentini Duranti.* Graduate of the medical school, University of Rome. In practice since 1892. He was the doctor attached to the office of the Inspector of Immigration in Genoa. See deposition at pages 3 and 4.

Naples.

1. *Dr. Sebastiano Musu.* Graduate School of Medicine and Surgery, University of Naples. Lieutenant Colonel Royal Italian Navy. In practice since 1904. Resident doctor of Lloyd Sabaudo at Naples. See his deposition, pages 7 and 8 and pages 9 and 10.

2. *Dr. Nicolo Izzo.* Graduate Medical School, University of Naples. In practice since 1904. Lieutenant Colonel Royal Italian Navy. At one time in charge of Emigrant House at Naples, familiar with operations at Emigrant House from 1911 to 1928, inclusive. See his deposition, pages 12 and 13, also page 26, as showing knowledge of immigration laws.

3. *Dr. Frederico Reale.* Graduate of University of Naples. In practice since 1898. He was connected with U. S. Public Health Service at Naples since 1902. See his deposition, pages 2 and 3 and page 9.

Ellis Island itself has deported for diseases or physical disabilities only 116 out of 99,236 carried by this line (R. 78, 116). No question can be presented as to the thoroughness with which Fusco and other aliens were examined (R. 33-36, 83).

Fusco was taken to Ellis Island upon arrival, and on November 1, 18 days after embarkation, was privately examined there by two doctors who certified him to be "afflicted with *tuberculosis pulmonary chronic* which is not easily curable. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation" (R. 288). The Line was not represented at that examination and no clinical record of the alien's condition was submitted to the Secretary of Labor.

November 4, 1926, Fusco appeared before a Board of Special Inquiry at Ellis Island. He was asked a few formal questions, not touching on his alleged illness, was told that he was excluded and had no right to appeal. Fusco was not represented. The Line was not even notified. November 16, 1926, Fusco returned to Italy (R. 288-290).

November 26, about the date Fusco arrived in Italy, the office of the Commissioner of Immigration for the Port of New York, notified petitioner of an intention to impose a fine of $1,000 and to require the refund of $95 passage money, based on the certificate of the examining surgeons, and stated:

"If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed 60 days from the date of this notice for that purpose * * *" (R. 280).

On January 26, 1927, petitioner filed a protest supporting the facts above stated. Duly authenticated certificates of the physicians who made the examinations before embarkation were attached (R. 281-286). This protest and the affidavits of the physicians were accepted by the Department. No criticism was made as to the form of the evidence, nor was the Petitioner requested to amplify it in any respect.

In accordance with the usual practice, the Commissioner of Immigration at New York forwarded the minutes of the Board of Special Inquiry, together with the evidence submitted by the Petitioner to the Labor Department at Washington. The proofs were submitted in the usual form (R. 120, 136-137).

On February 7, 1927, a decision was announced, signed, not by the Secretary of Labor, but by the Commissioner General and the Second Assistant Secretary, which said in part:

"The protest of the Line * * * has been reviewed, together with the medical certificates forwarded therewith * * *" (R. 277).

The decision recognized that, according to the protest and medical certificates submitted, Fusco had been examined on three separate occasions by competent physicians before embarkation and that no trace of tuberculosis was discovered, and that if in existence at the time of embarkation it was not detectable, it then proceeded (italics ours):

"The alien gave no history of the disease. Indeed he was not questioned with regard thereto, *and the only evidence in the record is the official certificate itself.* The Line's protest, in effect, is merely that the disease was not detected despite three examinations and therefore was not detectable * * *. *It is believed that the evidence placed in the record* by the company is not sufficient to call in question the accuracy of the opinion expressed in the official medical certificate" (R. 278).

The decisions imposing fines were written by John W. Browning, a civil service employee in the Department of Labor, formerly an army officer (R. 131, 133).

Browning, who was put on the witness stand by the Government (R. 131), testified that he did not consider the proof

submitted by the Line as evidence (R. 132); that he regarded himself as "an Appellate Court" (R. 136) and considered the protests merely as pleas or comment on the evidence.

The fine and passage refund were paid under protest to the respondent under the duress of his refusal, otherwise, to grant clearance to petitioner's ships (R. 1-26).

In some of the cases there are additional facts which present additional questions. One alien (Cause of Action 15) was excluded as an imbecile after having been brought to the United States by special permission of the Department of Labor with knowledge of his condition; another (Cause 13) was patently blind but had been granted a visa by the American Consul to come to the United States as a student under a special proviso of the Immigration Law; two others (Causes 5 and 12) were coming to the United States to go in transit to Canada and another (Cause 14) was a seaman coming to ship foreign. The fines in cause of action 2, 3 and 13 were imposed under the second sentence of the Act and involve the additional question of the effect of the disability on the earning power of the alien. Fines were imposed in all of those cases, and the propriety of such fines depends upon considerations additional to those presented in the case of Fusco.

The Pleadings and Proceedings Below.

Fifteen causes of action were stated in a common law action before Patterson, J., and a jury of one. The first to the ninth causes of action, inclusive, involve fines which were collected under Section 9 of the Immigration Act of 1917, which provided for penalties of $200 in cases of disease and $25 in cases of physical disabilities, together

with a refund of passage money to the alien. Of those causes of action, two were cases of fines imposed on account of aliens with a physical disability (causes of action 2 and 3) under the second sentence of the Act, and seven were cases of fines for prohibited disease, etc., under the first sentence of the Act. The Trial Judge allowed a recovery in the ninth cause of action because the alien, although initially rejected, was eventually admitted. He dismissed the others. That action was upheld on appeal.

The fines involved in the remaining six causes of action were collected under Section 26 of the Immigration Act of 1924, which provided for fines of $1000 in cases of disease, etc., and $250 in cases of physical disability, together with refund of passage money. All of those causes of action, except cause of action 13, involved prohibited diseases. Special circumstances were involved in causes of action 13 and 15, which will be dealt with separately.

The Trial Court allowed recovery of the fines in the 11th cause of action on the ground that the alien although initially rejected was eventually admitted and in the 15th cause of action for special reasons hereafter discussed. He dismissed the others. On appeal the ruling of the Trial Judge was affirmed as to all these causes of action except the 15th cause which was reversed.

At the trial, evidence was offered by oral testimony and Italian depositions, showing that competent examinations were made abroad and that the diseases were not discoverable at the time of embarkation. The Trial Judge conceded that the testimony tended to show in considerable detail that all passengers were put through at least two examination by skilled doctors (R. 352); but excluded from consideration all evidence not presented to the Secretary of Labor and held that the determination of the

Secretary was conclusive on him as to all facts, if there was the slightest evidence in support of his conclusion. He held the certificate of the American doctors to be such support although criticizing it as legal proof (R. 355). He admitted that on petitioner's construction of the case of *Oceanic Nav. Co.* v. *Stranahan*, 214 U. S. 320, he should at least try fundamental questions; but declined to do so on the ground that the secretary's "satisfaction" and not the actual fact of discoverability by competent examination was the fundamental, or as he called it, the crucial question (R. 354). He did hold, however, that if American doctors had made the examinations in Italy, the decision of the department could not be sustained (R. 361).

The Circuit Court of Appeals affirmed, holding that the fact of actual examinations was immaterial because "what will satisfy the secretary in that regard," is all that is necessary to impose the fine.

ERRORS ASSIGNED AND RELIED UPON BY PETITIONER.

1. The Courts erred in upholding the constitutionality of this Act which, as construed, vested in an administrative officer the final power to determine liability and exact fines of $1,000 and refunds of passage money.

2. The Courts erred in excluding from consideration competent evidence which showed that the aliens were subjected to competent medical examinations before embarkation and that such examinations did not disclose the existence of any disease or disability which might bar the aliens from admission to the United States.

3. The Courts erred in upholding the action of the Department of Labor imposing and collecting these fines on the record before it.

Summary of Argument.

1. The Act under consideration, as construed and applied by the lower courts, vested in an administrative officer the exclusive jurisdiction to determine liability for fines notwithstanding such determination amounted to a case arising under the laws of the United States of which general jurisdiction had been vested in the Courts of the United States by Article 3, Section 2 of the Constitution, the Judiciary Act (28 U. S. C. 41-1 and 41-9) and by Section 25 of the Immigration Act of 1917.

The severity of the penalty provided was such that the accused was entitled, as a matter of constitutional right, to a judicial determination of liability, at some stage, in a civil or criminal action. *Lipke* v. *Lederer,* 259 U. S. 557; *Regal Drug Co.* v. *Wardell,* 260 U. S. 386; *United States* v. *Regan,* 232 U. S. 37; *Central of Georgia Ry. Co.* v. *Wright,* 207 U. S. 127; *Dukich* v. *Blair,* 3 Fed. (2d) 302; appeal dismissed 270 U. S. 670.

Oceanic Steam Navigation Co. v. *Stranahan,* 214 U. S. 320, is not authority to the contrary because the penalties there involved were $100 and under, which were less than 10% of the amount provided in the present Act, and because, unlike the present case, no question of fact was involved.

Constitutionality of the present Act can be upheld only by a construction permitting determination, either initially or eventually, by plenary judicial trial, as indicated in *Elliot* v. *Swartwout,* 10 Pet. 137; *Louisiana* v. *McAdoo,* 234 U. S. 627; *Phillips* v. *Commissioner,* 283 U. S. 589; *Lipke* v. *Lederer,* 259 U. S. 557; *Lehigh Valley R. R.* v. *Commissioners,* 278 U. S. 24; *Ohio Valley Water Co.* v. *Ben Avon*

Borough, 253 U. S. 287; *United States* v. *Clyde S. S. Co.* (C. C. A. 2), 36 F. (2d) 691.

The Act provides that District Courts shall have jurisdiction of all causes arising under it (8 U. S. C. 164). This is such cause.

The function of determining liability for severe penalties is not like the ordinary functions of a regulatory or routine nature or requiring special knowledge, which are committed to administrative officers, such as the classification of imports under the Tariff Laws, classification of mail matter under the Postal Laws, regulatory action, usually looking to the future, as in the case of the Tariff Commission, the Interstate Commerce Commission and the Federal Trade Commission. The function here in question is punishment of a clearly defined statutory offense on a determination of past facts. Although clearly judicial in nature, the lower courts have held that it may validly be committed to an administrative officer without any provision for a review by either judicial or administrative action.

The Act as construed and applied below violates the Fifth Amendment to the Constitution and disregards the constitutional separation of powers of government. *Springer* v. *Philippine Islands*, 277 U. S. 189; *Cf. Prentis* v. *Atlantic Coast Line*, 211 U. S. 210.

2. Assuming that the power to impose the fines provided by this Act may validly be committed to the Secretary of Labor, the power to act exists only in those cases wherein a carrier, bringing a diseased or disabled alien to the United States, has failed to perform in good faith the obligation to subject the alien to a competent medical examination before embarkation. *Oceanic Steam Navigation Co.* v. *Stranahan, supra.*

Competent evidence, tending to establish that the Petitioner had caused each of the aliens involved in this case to undergo at least three competent medical examinations before embarkation and that as a result of such examinations they were certified to be free from symptoms of any disease or disability which might bar them from admission to the United States, was offered upon the trial of the case but was rejected and refused consideration in the courts below. That evidence went to the fundamental question of the jurisdiction or power of the Secretary to act. Its rejection was reversible error. *Crowell* v. *Benson*, 285 U. S. 22; *Ng Fung Ho* v. *White*, 259 U. S. 276; *In re Fassett*, 142 U. S. 479; *In re Grimley*, 137 U. S. 147; *Smith* v. *Hitchcock*, 226 U. S. 53; *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94; *Federal Trade Commission* v. *Klesner*, 280 U. S. 19; *Miller* v. *Horton*, 152 Mass. 540; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643.

3. The fines were improperly imposed on the basis of the evidence before the Secretary of Labor:

a. Because the action of the Department in treating the opinion of the American Health Surgeons conclusive as to the discoverability of the diseases before embarkation was reversible error of law. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42; *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94.

b. There was no evidence before the Secretary of Labor which fairly supported the finding of liability. *Matter of Case*, 214 N. Y. 199; *Gegiow* v. *Uhl*, 239 U. S. 3; *Chin Yow* v. *U. S.*, 208 U. S. 8; *Tisi* v. *Tod*, 264 U. S. 131; *Kwock Jan Fat* v. *White*, 253 U. S. 454; *Johnson* v. *Damon*, 16 Fed. (2d) 65; *Mason* v. *Tillinghast*, 27 Fed. (2d) 580.

c. The Secretary had in his control evidence which established the Petitioner's innocence, but such evidence was not considered or incorporated in the record of the proceedings before the Department of Labor, thus depriving the Petitioner of a fair hearing. *Kwock Jan Fat* v. *White,* 253 U. S. 454; *Chin Yow* v. *U. S.,* 208 U. S. 8.

d. The judicial function of determining liability for the fines was delegated to subordinate officers. Such power cannot be legally delegated. *Runkle* v. *U. S.,* 122 U. S. 543; *N. J. Wholesale Drug Co.* v. *Brown,* 289 Fed. 108; *Bay State Wholesale Drug Co.* v. *Potter,* 277 Fed. 529.

4. In any event fines were improperly imposed on account (a) aliens who were not seeking admission to the United States. *Taylor* v. *U. S.,* 207 U. S. 120; *Dollar Steamship Line* v. *Elting,* 51 F. (2d) 1935; *Cunard Steamship Co.* v. *Stranahan,* 134 Fed. 318. (b) Aliens afflicted with physical disabilities which might affect their ability to earn a living where final determination of admissibility could only be determined at the port of arrival. *Compagnie Francaise a Vapeur* v. *Elting,* 19 F. (2d) 773. (c) Aliens coming by special governmental permission. *Spanish Royal Mail Line Agency, Inc.* v. *United States,* 45 F. (2d) 404; *Compagnie Francaise, etc.* v. *Elting,* 19 F. (2d) 773.

ARGUMENT

FIRST POINT.

THE STATUTE AS CONSTRUED AND APPLIED BY THE DEPARTMENT OF LABOR AND THE LOWER COURTS IS UNCONSTITUTIONAL.

The determination of liability for a fine of the character involved in this action constitutes a case, of which general jurisdiction has been given to the courts of the United States by Article 3, Section 2 of the Constitution, and to the District Courts by the judiciary act (28 U. S. C. 41-1), because it is a controversy which arises under the laws of the United States and involves a penalty (28 U. S. C. 41-9). Section 25 of the Immigration Act of 1917 also in general terms gives jurisdiction to the District Courts in the following language (8 U. S. C. 164):

"That the District Courts of the United States are hereby invested with full jurisdiction of all causes, civil and criminal arising under any of the provisions of this Act * * *."

General jurisdiction of such matters having been given to the Courts of the United States, it cannot be taken away and conferred upon another tribunal or officer except by express terms in an Act of Congress acting within its constitutional limitations.

The lower Courts have declined to exercise this jurisdiction because of their construction of the Immigration Acts.

In *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320, this Court upheld the constitutionality of a predecessor of this act, which imposed a penalty of $100, but

limited the scope of the decision by saying that an administrative officer might be validly authorized to enforce the performance of a duty by the exaction of "reasonable money penalties."

That case was a direct challenge to the power of Congress; all the inferences of fact were conceded in favor of the Government. The court held the Act of 1903 within the power of Congress to regulate Immigration under the Commerce Clause.

And the Act was held not to be violative of the due process clause as construed and applied.

In the first aspect, the section was held not to be faulty as imposing criminal punishment without criminal trial when the money penalties provided were small. Secondly it was not faulty as an Act providing for enforcement of such penalties by mere administrative measures, without any judicial trial, in cases where there was no evidence of compliance with the law by the carrier.

If it is the law that Congress can, by legislative fiat, make an exaction of $1095 a penalty which may be committed to the exclusive determination of an administrative officer, then the present Act must be upheld in the first aspect.

The test to be applied is that suggested in *Schick* v. *United States* (1904), 195 U. S. 65, 68:

"The truth is, the nature of the offense and the amount of punishment prescribed rather than its place in the statutes determine whether it is to be classed among the serious or petty offenses, whether among crimes or misdemeanors."

And this principle is fundamental in all matters applying to life, liberty or property. *Manley* v. *Georgia,* 279 U. S. 1.

The exaction now under consideration is $1,095, an amount which has been consistently held by this Court as excessive for administrative enforcement. *Lipke* v. *Lederer*, 259 U. S. 557; *Regal Drug Co.* v. *Wardell*, 260 U. S. 386; *U. S.* v. *Regan*, 232 U. S. 37; *Central of Georgia Ry. Co.* v. *Wright*, 207 U. S. 127; *Dukich* v. *Blair*, 3 F. (2d) 302, appeal dismissed 270 U. S. 670.

Congress itself has recognized in this act that $200 may be suitable punishment for a misdemeanor (8 USC s 146), and fines of $1000 under the immigration Act for bringing in contract aliens were regarded by this court as properly requiring plenary judicial trial (*U. S.* v. *Regan*, 232 U. S. 37).

"* * * certainly we cannot conclude, in the absence of language admitting of no other construction, that Congress intended that penalties for a crime should be enforced through the secret findings and summary action of executive officers. The guarantees of due process of law and trial by jury are not to be forgotten or disregarded. See Fontenot *v.* Accardo, 278 Fed. 871." Lipke *v.* Lederer (1922), 259 U. S. 557, at p. 562.

The Chief Justice in the *Stranahan* case may have envisioned just such a case as the present one when he limited the scope of administrative functions to the enforcement of "reasonable money penalties." P. 339.

The decisions below and the practice of the Department have construed this Statute to create the most exotic governmental process in all our system. The Statute, so construed, not only creates an offense and provides administrative officers with means to obtain security for the payment of the penalty, by internment of the vessel, but authorizes an administrative officer, in the course of the same proceeding, to pass conclusively on the guilt of the

defendant; and direct appropriation of the security. The Act, so construed, deprives the petitioner of its elemental right to have recourse to the courts. Unlike other Acts relating to administrative authority, this Act, when so construed, does not provide for an appeal or a review of any kind, either judicial or administrative. In no branch of the Government is there a similar power. Since the Act, as a whole, does not expressly deny a judicial trial, but in general terms grants it, the courts below should have pursued the course followed in *Lehigh Valley R. R.* v. *Commissioners*, 278 U. S. 24, where the Statute provided only a limited review from an order of a commission requiring a railroad to eliminate grade crossings. The Constitutionality of that Act was only enforced because the courts construed the Act to permit the common right of judicial trial involving complete examination of the facts. It was only because the Court had so construed the Act that it did not fall within the proscription of *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287.

It seems reasonable in this case that the Court instead of finding an implied denial of the right to a full judicial trial should have found an express reservation of this right in section 25 of the Act which grants the District Court jurisdiction in cases arising under it.

In any event the refusal of the lower courts in this case to consider evidence placed before them amounts to an abdication of judicial functions, unwarranted by statute and repugnant to the Constitution.

It may be, however, that the Act is susceptible of construction which would permit its constitutionality to be upheld. It is conceivable that the true construction is that it contemplated, first, the obtaining of security for the payment of penalties by providing for withholding clearance,

and second, preliminary determination of liability by the Secretary of Labor, without intending to deprive the carrier from thereafter proceeding by common law action against the Collector under section 25 of the Act for a plenary judicial determination of its liability for the fine.

Such appears to have been the view entertained by this Court of the effect of the old Customs Laws before special modes of review as by the Board of General Appraisers and the Customs Court had been provided. *Elliott* v. *Swartwout*, 10 Peters, 137.

In the later case of *Louisiana* v. *McAdoo*, 234 U. S. 627, 632, this Court again recognized that there must always be some right of review of administrative determination of judicial questions. It said:

"There have always been remedies by which an importer may recover an excess rate of duty exacted from him by a Customs Collector, either by common law action against the Collector, as in *Elliott* v. *Swartwout*, 10 Peters 137, or by Statute."

While the right to obtain security by summary administrative action cannot be questioned, due process requires ultimate judicial determination where property rights are involved. This was expressly recognized by this Court in *Phillips* v. *Commissioner of Internal Revenue*, 283 U. S. 589, 595, in relation to taxes:

"Where as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the Government have been consistently sustained * * *. Property rights must yield provisionally to Governmental need. Thus, while protection of life and liberty from administrative action alleged to be illegal, may be obtained promptly by writ of habeas corpus * * *".

The right to protection for invasion of property rights may be postponed to a later date upon showing of some Governmental officer.

"Where only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate."

And the Court pointed out that in the income tax system the taxpayer may avail himself of the right of direct appeal to the Board of Tax Appeals, which is peculiar to a certain extent in that findings of fact by the Board of Tax Appeals, if supported by evidence, will be held final in the Court. However, if the taxpayer elects not to appeal, he is entitled, as the Court pointed out in considering the Constitutionality of his remedy by direct appeal, to "judicial review," in which the findings of the administrative officers are not binding.

"The alternative judicial review provided is adequate in both cases" (p. 601).

Heavy punitive fines have been generally held to be subject to judicial review. *Ex parte Young,* 209 U. S. 123; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Wynne,* 224 U. S. 354; *Missouri Pacific Ry. Co.* v. *Tucker,* 230 U. S. 340; *Wadley Southern Ry. Co.* v. *Georgia,* 235 U. S. 651; *Southwestern Tel. Co.* v. *Danaher,* 238 U. S. 482; *Oklahoma Operating Co.* v. *Love,* 252 U. S. 331.

And Congress, itself, has usually recognized this principle by providing expressly for judicial trial, *e. g.,* The Interstate Commerce Act, 49 U. S. C., s. 16 (9) and 20 (6). Certainly if a civil trial is the proper remedy to secure obedience to orders of the Interstate Commerce Commission, it is equally essential to punish for violation of a statute.

The Shipping Act, Federal Trade Commission Act, and all Acts delegating special powers, recognize the common right to judicial trial. Whenever an alternative trial is provided, carefully selected tribunals are set up and are required to follow substantially judicial procedure, and review by higher federal courts is authorized. Such tribunals are established only when the problems involved are of a highly technical nature which may be more conveniently considered by specialists or where an administrative body is designed to determine questions of general policy which it is its duty to maintain.

No one has suggested that this Act purports to grant anything in the nature of a judicial trial. Even the Stranahan case recognized that. No special training is necessary for the determination of the questions here involved, no general policy is to be determined. The sole function is punishment for a clearly defined statutory offense. There is no reason to believe that Congress intended, if it constitutionally could, to deny judicial trial for the determination of violations of the Immigration Act. The Act of the Department in this case is punitive and not regulatory. No rule is made for the future, nor is the interpretation or application of any rule of the Department in question, nor does this controversy arise under any rule of the Department or involve a determination or effectuation of any policy. The Statute thoroughly defines the offense.

The fact that this case involved immigration tends at first blush to suggest that the matter is political. Immigration matters involving exclusion of aliens are generally political and properly within administrative discretion. It must be borne in mind in this case that the political features involved in the exclusion of Fusco no longer existed when the fine was imposed. Fusco had returned to Italy. The

executive duty to repel Fusco from our midst had been performed and our national health had been preserved. No urgency remained and no further power was needed by the Department in aid of its duty to exclude Fusco. The circumstances might require that someone be punished for bringing Fusco, but there was no urgency about it. The only possibility would be that in certain cases if the boat got out of harbor the United States might be unable later effectively to punish. For that reason there was some urgency that security for the punishment in the form of internment of the vessel be exacted, and this may be within the power of an executive just as a Peace Officer may arrest,—a writ of foreign attachment may issue in admiralty against a non-resident under similar circumstances,—but once security for the ultimate punishment was obtained no governmental interest was furthered by the denial of due process to the defendant.

The difference in the function may be perceived by a comparison of this case with *United States ex rel Polymeris* v. *Trudell, Immigration Inspector,* 284 U. S. 279, where the plaintiff was an immigrant seeking admission to the country and was repelled by the executive at our borders. In our case, Fusco had returned to Italy, the party suing was not an immigrant but was a corporation doing business in the United States and possessing large properties in this country. The punishment in this case is for negligence.

The function of the Interstate Commerce Commission in finding unreasonableness in the past as a fact is judicial. *Arizona Grocery Co.* v. *Atchison Ry.,* 284 U. S. 370, 385.

Even where the Department is dealing with the alien himself and not with a third person, such as a Steamship Company, the Department is limited. Its power is similar to the power of a Peace Officer, to detain an alien only for

a short time for the purpose of exclusion. Any further restraint of the alien in the nature of a punishment for wrongful entry is solely a judicial question which may not constitutionally be delegated to the Department. *Wong Wing* v. *United States*, 163 U. S. 228.

The *Wong Wing* case would appear to be conclusive in this case because of its similarity to the action of the Department here, which is punishment for a past offense. As we have pointed out above, the exaction in this case is clearly punitive, and being such can be determined only by a judicial trial in a civil or criminal action. *United States* v. *Regan*, 232 U. S. 37. In the *Regan* case a penalty of $1,000 for bringing in contract labor was imposed. Judicial trial, of course, was provided. The whole opinion of Mr. Justice Vandeventer in that case illustrates the due procedure necessary to collect a penalty of that amount. The punishment in the *Regan* case was for an offense almost identical with the offense in this case.

There is no need to emphasize the constitutional doctrine of separation of powers. The application here is too obvious. *Springer* v. *Philippine Islands*, 277 U. S. 189, 201; Cf. *Prentis* v. *Atlantic Coast Line*, 211 U. S. 210; *Andrews* v. *Hovey*, 124 U. S. 694.

The history of this legislation which shows the gradual encroachment by legislative enactment, of the executive in the judicial field, by a perhaps inadvertent amendment, whereby the exaction of criminal penalties in the sum of $1,095 is said to be vested solely in the executive justifies repetition of the language of this Court in *Boyd* v. *United States*, 116 U. S. 616, 635.

"illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can

only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right as if it consisted more in sound than in substance."

It is submitted that the act as construed and applied by the Secretary of Labor and the lower courts in this case, is unconstitutional.

SECOND POINT.

EXACTIONS OF FINES BY THE SECRETARY OF LABOR UNDER THE ABOVE SECTIONS ARE SUBJECT TO JUDICIAL REVIEW IN CASES IN WHICH IT APPEARS AS A MATTER OF FACT THAT THE ALIENS WERE SUBJECTED TO COMPETENT MEDICAL EXAMINATIONS BEFORE EMBARKATION, AND THAT SUCH EXAMINATIONS DID NOT DISCLOSE THE EXISTENCE OF ANY DISEASE OR DISABILITY WHICH MIGHT BAR THE ALIENS FROM ADMISSION TO THE UNITED STATES.

The Petitioner maintains that it accepted these aliens for passage only after they had been subjected to competent medical examinations, which showed them to be free from any of the diseases or disabilities specified in the statute at the time of foreign embarkation. If that be true, the Secretary of Labor was without power to impose fines, because it was the purpose of the Statute to impose penalties only in those cases in which the carrier failed to comply with its obligation to cause such examinations to be made. That question therefore goes to the jurisdiction of the Secretary to act and is a fundamental question which should be determined *de novo* on all the evidence submitted.

The lower courts rejected all evidence except records of the proceedings before the Department of Labor. The additional evidence which was offered upon the trial and was rejected was of two classes. One related to Departmental practice and the other to the nature, character and extent of medical examinations made by doctors of the Steamship Company before the embarkation and to the measures taken by officials of the company to insure refusal of passage to any alien whose admissibility appeared doubtful.

The evidence falling within the first category consists in part of testimony of United States Consuls at Naples and Genoa and of excerpts from the Consular Instructions issued by the State Department upon the recommendation of the Labor Department, which showed that before an Immigration visa was issued the alien was required to and did submit to a medical examination and presented a certificate of the examining doctor to the effect that he was not suffering from any disease which might bar his admission to the United States (Depositions of Gargiulio and Lawson deposited with Clerk of this Court, and Departmental Instructions, Consular R. 205-212 inc.).

The evidence falling within the second category consists of depositions taken in Italy, comprising the testimony of doctors of the Italian Emigration Service, doctors and officials of the Steamship Company and the evidence of doctors of the Steamship Company offered upon the trial. That evidence shows in detail the precautionary measures which were taken by this Company to assure itself that an alien was free from disease before he was accepted for passage.

A brief statement of the nature and extent of that testimony is contained in the Statement of Facts, *supra.*

A comparison of the medical examinations which were made in Italy and those made on arrival of the immigrants, as described by Drs. Valenzi (Record, pp. 27, 68) and De Sylva (Record, pp. 80-109) on the one hand and Dr. Friedman (Record, pp. 142-198) on the other, shows that the examinations abroad were competent and were more thorough than examinations of the same character which were made upon arrival.

The lower courts erred in rejecting the foregoing evidence, because it went to the fundamental question of the power of the Secretary of Labor to act.

The section under consideration provided for the imposition of a fine "if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time."

While the language of the section is somewhat ambiguous, its history makes it clear that the purpose of Congress was to impose upon steamship companies the obligation of subjecting all immigrants to examinations by competent medical examiners before being allowed to embark, and to empower the Secretary of Labor to impose fines when it appeared that a carrier had failed to perform its obligation and that a disease existed upon arrival which might have been discovered before embarkation *if* the required examination had been then made.

A section of this character first appeared in the Immigration Act of 1903, and it has been reenacted three times without material change, except as to the amount of the

fine, which has been raised from $100 in the 1903 Act to $1,000 and refund of passage money in the 1924 Act.

This section as it appeared in the 1903 Act was before this Court in the case of *Oceanic Steam Navigation Co.* v. *Stranahan,* 214 U. S. 320, which involved solely the question of the constitutionality of the provision. In upholding its constitutionality, this Court construed that provision as follows (p. 332) (italics ours):

"the *power* to impose the exaction which the statute confers on the Secretary is lodged in that officer *only* when it results from the official medical examination at the point of arrival not only that an alien is afflicted with one of the prohibited diseases, but that the stage of the malady as disclosed by the examination establishes that the alien was suffering with the disease at the time of embarkation, and that such fact would have been then discovered *had* the medical examination been then made by the vessel or its owners, as the statute requires."

In support of that construction, this Court quoted from the report of the Senate Committee on Immigration which said of the provision in question (italics ours):

"This sufficiently guards the transportation lines from an unjust and hasty imposition of the penalty, insures a careful observance of the law, and leaves in their own hands the power to escape *even a risk* of the fine being imposed, since they can refuse to take on board even the most doubtful case until certified by competent medical authority to be entirely cured" (p. 334).

If the Line is protected by a certificate that the alien is cured, it is surely protected by a certificate that he was not afflicted with disease.

That decision was announced in 1909. The interpretation by this Court and by the Senate Committee of the pro-

vision as it appeared in the 1903 Act necessarily attached to the provision as it was reenacted in subsequent legislation.

So construed, the Secretary is without power to impose fines if it appears as a matter of fact that the required medical examinations were made before embarkation.

The Circuit Court of Appeals upheld the exclusion of the evidence relating to examination abroad, apparently on the theory that the satisfaction of the Secretary of Labor is the fundamental fact. It said (55 Fed. (2d) 1050; R. 411, 412):

"The only real issue of fact related to the decision of the Secretary of Labor on the question of detectability of the disability abroad * * * Determination of the fact of foreign detectability of an excluding condition has been left to what will satisfy the Secretary of Labor in that regard. This means that whatever the Secretary of Labor decides, provided his decision is neither arbitrary or capricious, is final."

The foregoing is directly contrary to the construction of the same language which this Court deemed necessary to uphold its constitutionality in *Oceanic Steam Navigation Co.* v. *Stranahan, supra.*

Furthermore, the decision imposed upon transportation companies the liability of an insurer, for the Circuit Court of Appeals said (R. 413):

"It takes no account of any mistakes an examiner might make and still be a competent man. The burden placed upon a steamship company transporting aliens to our shores is not satisfied by its employing competent examiners to make examination of aliens at the time of embarkation, but it is charged with whatever knowledge it would obtain from a competent examination of each alien at that time."

It is inconsistent with the plain meaning of the language of this section to treat the obligation of the carrier as that of an insurer. The provision that liability for a fine shall attach only in the event that one of the diseases or disabilities existed at the time of foreign embarkation and might have been discovered by means of a competent examination at that time, is incompatible with the idea that liability was intended to attach in cases where it has been established that the alien was accepted only after a competent medical examination showed him to be free from the proscribed diseases or disabilities. The same section imposes a fine for bringing illiterate aliens and aliens native of the Continent of Asia "if it shall appear to the satisfaction of the Secretary of Labor that these disabilities *might have been detected by the exercise of reasonable precaution* prior to the departure of such aliens from a foreign port." The determination of illiteracy and nationality is a more simple matter than the determination of the existence of disease, but Congress saw fit to impose not an insurer's liability but only liability for failure to exercise reasonable precaution. The words "might have been detected by" are used in defining both obligations, and intend in both cases to require only the exercise of reasonable diligence.

That is the only interpretation which is consistent with the legislative history of the section, heretofore referred to, or with the general scheme of the Immigration Act which does not contemplate the exaction of fines except for negligent or intentional violations of the law. *Taylor* v. *United States*, 207 U. S. 120; *Cunard S. S. Co.* v. *Stranahan*, 134 Fed. 318.

While the section under consideration seeks to prevent the entrance into the United States of aliens who are afflicted with the enumerated diseases or disabilities, it does not

provide for a penalty against the carrier upon a mere showing of the existence of the disease upon arrival.

The penalty is incurred only if it shall appear that the disease existed before foreign embarkation in such form that it might have been discovered by competent medical examination. Or, paraphrasing the construction applied in the Stranahan case and announced in the Report of the Senate Committee, the penalty is incurred if it shall appear that the disease existed before foreign embarkation and might have been discovered *if* a competent medical examination had then been made. Penalties were contemplated only in cases of the negligent or intentional failure to comply with the statute. So construed the Secretary was acting outside the scope of his authority in imposing fines, once it had been shown that the aliens had been subjected to competent medical examinations before embarkation. The evidence that such examinations had been made is undisputed in this case.

The essential or fundamental question in this case therefore is whether these aliens had been subjected to competent medical examination before embarkation, or at most whether the diseases or disabilities with which they were alleged to be afflicted upon arrival existed in discoverable form at the time of foreign embarkation; and those are the points to which the excluded evidence was directed.

The situation involved in *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, was analogous. The question there presented was whether the case which had been presented to the Federal Trade Commission was one of public interest. The Commission was authorized to proceed under the Statute:

"* * * if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public."

This Court held that those were complementary words of limitation upon the jurisdiction of the Commission and then said (p. 649):

"Thus, the commission is called upon first to determine, as a necessary prerequisite to the issue of a complaint, whether there is reason to believe that a given person, partnership or corporation has been or is using any unfair method of competition in commerce; and that being determined in the affirmative, the commission still may not proceed unless it further appear that a proceeding would be to the interest of the public, and that such interest is specific and substantial * * *. Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable they must be conferred by Congress. They cannot be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions."

It has been uniformly held by this Court that the existence of facts upon which the authority of an administrative officer to act depends is always subject to judicial review.

The following have been held by this Court to be fundamental questions open to judicial review:

The relation of employer and employee. *Crowell* v. *Benson*, 285 U. S. 22.

The citizenship of an alien. *Ng. Fung Ho* v. *White*, 259 U. S. 276.

Whether an article sought to be taxed was a dutiable article. *In re Fassett*, 142 U. S. 479.

Whether the person involved was an enlisted soldier subject to military service. *In re Grimley*, 137 U. S. 147.

Whether the article was a book or periodical, and whether the article was excludable mail matter. *Smith* v.

Hitchcock, 226 U. S. 54, *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94. Here the fundamental question was not restricted to whether the article was mail, but extended to the class or status of the article.

The existence or non-existence of competition. *Federal Trade Commission* v. *Klesner*, 280 U. S. 19.

The same doctrine was applied in *Miller* v. *Horton*, 152 Mass. 540, the fundamental question being whether a horse was afflicted with a contagious disease.

In all such cases the Court declined to consider itself bound by the finding of the Administrative officer and held that the question was one which should be determined by the Court itself according to its own mode of procedure. As was said by this Court in *Crowell* v. *Benson*, *supra* (p. 56):

"In relation to these basic facts, the question is not the ordinary one as to the propriety of provision for administrative determinations. Nor have we simply the question of due process in relation to notice and hearing. It is rather a question of the appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions. It is the question whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency—in this instance a single deputy commissioner—for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend. The recognition of the utility and convenience of administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action, does not require the conclusion that there is no limitation of their use, and that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the

Executive Department. That would be to sap the judicial power as it exists under the Federal Constitution, and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and finality as to facts becomes in effect finality in law."

The same principle was stated by Mr. Justice Holmes in *Miller* v. *Horton, supra,* where the defense sought to justify the killing of a horse on the ground that an administrative body had found that he had glanders. That question was held to be open to judicial review in the following words:

"* * * Accordingly we are of opinion that the authority and jurisdiction of the Commissioners to condemn the plaintiff's horse under section 13 was conditional upon its actually having glanders * * *."

"The fact as to the horse having the disease was open to investigation in the present action, and on the finding that the horse did not have it, the plaintiff was entitled to a ruling that the defendants failed to make out their justification."

A fundamental or jurisdictional question of this character may be resolved as a mere matter of law, when there is no dispute as to the facts, *School of Magnetic Healing* v. *McAnnulty, supra,* p. 109. If the facts are disputed, the determination will be made by a trial *de novo, Crowell* v. *Benson, supra,* and like cases.

Furthermore, as was said in *Crowell* v. *Benson, supra,* the Courts of the United States are always open to an independent determination of all questions both of fact and law where the enforcement or protection of constitutional rights are involved. *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287.

It is submitted, therefore, that the lower Courts erred in excluding the evidence which established the facts upon the basis of which the power of the Secretary to impose fines must be determined.

That evidence establishes so conclusively that these aliens were subjected to competent examinations before embarkation, as required by the statute, and that the diseases and disabilities complained of either did not then exist or were not then detectable, that we have the finalty of fact which becomes finalty in law. The Secretary of Labor clearly acted beyond the scope of his authority and the decision of the Circuit Court of Appeals as to all causes of action except the 9th and 11th should be reversed with directions that judgment be entered in favor of the petitioner.

THIRD POINT.

IRRESPECTIVE OF THE EVIDENCE REJECTED BY THE LOWER COURTS THE PETITIONER SHOULD RECOVER BECAUSE THE DEPARTMENT OF LABOR ERRONEOUSLY CONSIDERED THE OPINION OF THE PUBLIC HEALTH SURGEONS CONCLUSIVE PROOF OF LIABILITY; BECAUSE THE FACTS BEFORE THE DEPARTMENT DID NOT SUPPORT THE FINDING OF LIABILITY; BECAUSE THERE WAS EVIDENCE IN THE POSSESSION OF THE DEPARTMENT BUT NOT CONSIDERED WHICH NEGATIVED LIABILITY AND BECAUSE THE DETERMINATION OF LIABILITY WAS NOT MADE BY THE AUTHORIZED OFFICER.

The proofs before the Department of Labor at the time the fines were imposed are set forth in the Record, pp. 214-341. Such proofs consist in every case of the minutes of the Board of Special Inquiry and the protest of the Line. It is not feasible to attempt a detailed consideration of the

evidence submitted by the Line in the form of a protest in each case and the discussion of the Fusco case is continued as illustrative. The facts of that case are set forth, *supra*, pp. 3-11. The proofs are more elaborate in that case than in some of the others but it serves to emphasize the lack of impartial consideration on the part of the Department because the result was the same regardless of the nature or extent of the proof.

The evidence relied upon to support the finding of liability was identical in each case and consisted of a certificate by the doctors who examined the alien after arrival, certifying to the existence of a disease with an opinion always in the following form:

"In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation" (R.., 215, 232, 240, 247, 254, 263, 269, 272, 288, 303, 317, 340, 393).

The medical certificate to the effect that a disease was discovered after arrival and the opinion mentioned was the extent of proof supporting the liability in all cases. No facts were stated concerning the stage of the malady or the extent or nature of the symptoms which might justify such an opinion.

The decisions of the Department of Labor imposing these fines show that the Department erroneously treated these opinions as conclusive proof of the liability of petitioner under the Statute.

In more or less stereotyped language these decisions uniformly held the so-called "official medical certificate" conclusive (R., 214, 222, 235, 246, 252, 257, 264, 271, 278, 296, 307, 334, 391).

In the *Fusco* case the Department clearly ignored the evidence submitted by the petitioner, for it said:

"The alien gave no history of the disease. Indeed, he was not questioned with regard thereto, and the only evidence in the record is the official certificate itself" (Rec. 278).

It further said:

"It is believed that the evidence placed in the record by the company is not sufficient to call in question the accuracy of the opinion expressed in the official medical certificate" (Rec. 278).

Those statements coupled with the testimony of J. W. Browning, an employee of the Department, who wrote the decision, show conclusively that the Department treated the opinion embodied in the so-called "official medical certificate" as the only evidence before the Department for consideration. Mr. Browning testified that the protests of the petitioner were not evidence; that he considered the Department of Labor an Appellate Court and that he took the protests only as pleas or petitions, not as evidence of the facts represented (Rec. 131, 132, 136).

The action of the Department of Labor in thus ignoring the protests and medical certificates submitted by the petitioner as having evidentiary value and treating the opinion in the so-called "official medical certificate" as conclusive was based upon an erroneous interpretation of the law, which may have arisen from the fact that Section 17 of the 1917 Act (8 U. S. C. 153), makes the certificate conclusive upon the Board of Special Inquiry of the existence of a disease upon arrival for the purpose of exclusion, and Section 35 of the Act (8 U. S. C. 169) makes the certificate

conclusive of liability for the $50 fines there provided for bringing in diseased seamen.

The Section under consideration contains no provision which authorizes the use of such a certificate as conclusive evidence, or indeed as any evidence at all, in imposing fines under this Section. The fact that Section 35 limits the fine to $50 and expressly gives the Secretary discretion to remit such fines, where the certificate is made conclusive, is impressive evidence of the fact that it was not intended to be given that effect in the much larger fines prescribed in Section 9 as amended by Section 26 of the 1924 Act.

On this point the District Court said:

"It has been argued that the Secretary should not treat the medical certificate or opinion as conclusive upon him, although the Supreme Court in the Stranahan case indicated that the Secretary would be warranted in attaching conclusive weight to it. Be that as it may, the records of these proceedings before the Secretary do not indicate that he considered himself bound by the medical certificate or opinion. On the contrary, he afforded to the plaintiff the opportunity to convince him that the medical certificate or opinion was erroneous." (R. 355.)

The Circuit Court of Appeals, after citing the Stranahan case, said:

"Nor was it error to treat the certificate of the medical examiners as evidence of the facts therein stated. They were reports of examinations made in the performance of their official duty and were a part of the record before the Secretary. United States *ex rel.* Feuerstein *v.* Tod. 296 F. 127. Compare U. S. *v.* Day, 33 F. (2d) 267." (R. 412.)

The cases relied upon as authority for the foregoing statement are cases in which the exclusion of aliens was

upheld in reliance upon the finality given to the medical certificate in such cases by 8 U. S. C. 153, which provides (italics ours):

"The decision of a board of special inquiry shall be based upon the certificate of the examining medical officer and * * * shall be final as to the *rejection of aliens* affected with * * *."

The implication to be derived from these citations by the Circuit Court of Appeals can only be that, that Court considered the medical certificate conclusive evidence to sustain liability. Indeed Judge Learned Hand, speaking for the Court in *United States* v. *S. S. Presidente Wilson*, decided subsequent to this case, makes it plain that such is their construction of the statute. See 56 F. (2d) 742 at 743. Although the District Judge did not rest his opinion on that ground, he stated that the *Stranahan* case supported the proposition.

In the *Stranahan* case (214 U. S. 320) it clearly appears from the report in the Circuit Court (155 Fed. 428) that the Steamship Company admittedly had not subjected the aliens to any medical examination prior to embarkation. The Company conceding this fact to the Government contested the validity of the Statute on Constitutional grounds, contending that notwithstanding its failure to examine, the fine could not be sustained. This Court construing the Statute as imposing a sanction to a duty admittedly not performed, held that the preliminary fact necessary to establish the case of the Government, *i. e.*, that the alien was diseased on arrival, could be established by the medical certificate.

The scope of the language used in that case, therefore, must be limited to the circumstances under consideration

and cannot be extended to a case where examinations before embarkation admittedly had been made.

The treatment of the medical certificate as conclusive was an error of law, which in itself justifies a reversal. *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94; *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42.

Nor can the fines be supported on the theory of the District Judge that there was adequate evidence before the Department to uphold the findings.

As was said by the New York Court of Appeals in *Matter of Case*, 214 N. Y. 199, 203.

"Insufficient evidence is, in the eye of the law, no evidence," and "When we say that there is no evidence to go to a jury, we do not mean that there is literally none, but that there is none that ought reasonably to satisfy a jury that the fact sought to be proved is established."

In the *Fusco* case, as previously pointed out, the Department had before it the uncontradicted statements contained in the protest that the Petitioner regularly employed competent physicians who made careful examinations of each alien before embarkation; that this alien was subjected to three separate medical examinations before embarkation, and was accepted for passage only because such examination did not disclose the existence of any prohibited disease or disability (R. 282). It also had before it an authenticated copy of the certificate of two of the examining doctors who made an examination before embarkation (R. 286) and an affidavit of one of those doctors sworn to after the rejection of the alien certifying that prior to embarkation he made an accurate examination and found

the alien free from symptoms of any disease whatever (R. 284, 285).

Opposed to this evidence the Record showed nothing except the so-called "official medical certificate," issued upon an examination eighteen days after the embarkation of the alien.

Such certificates have been held not to be competent proof unless accompanied by a statement of supporting facts.

> *U. S. ex rel. Fong On* v. *Day*, 39 F. (2d) 202;
> *U. S. ex rel. Papa* v. *Day*, 45 F. (2d) 435.

Certainly the Record establishes that at least three qualified Doctors examined the alien prior to embarkation and if that is the extent of the obligation imposed upon Petitioner then there is no evidence to support the imposition of the fine. The opinion of the Public Health Surgeons at most can only be taken as an attack on the competency of the Line's Doctors.

The facts stated in the protest and the certificates submitted therewith were proper proof of the matters alleged. *Bermuda & West Indies S. S. Co.* v. *Elting* (S. D. N. Y.), 45 F. (2d) 411. The district judge conceded our proof established the truth and conceded that a certificate of an American Consular doctor made about the time of embarkation, in accordance with present practice, would be conclusive evidence of non-discoverability at that time (R. 361).

The examinations shown by the evidence in this case were of the same character as those conceded to be sufficient by the district judge, except that they were made by Italian doctors.

The district court must accept the truth of the statements of the protest. It could not decline legal proof of the true facts in the case because not submitted in that form to the department and at the same time measure the proof before the Secretary by judicial standards. Both courts comment on the technical deficiencies of petitioner's proof. The courts must have failed to accept the evidence purported to have been accepted by the Department; or must have applied the scintilla of evidence rule. In no other way could they support a finding on a concededly disproven point.

The petitioner submits that the opinion of the Public Health Surgeons without facts to support that opinion or anything to show whether they knew the qualifications of the doctors abroad, is not sufficient to support a finding that Doctors Musu, Calise, Valenzi and Dandini and the surgeons of the Royal Italian Emigration Service were incompetent, or that their examinations were not competent examinations. *Gegiow* v. *Uhl,* 239 U. S. 3; *Chin Yow* v. *U. S.,* 208 U. S. 8; *Tisi* v. *Tod,* 264 U. S. 131; *Kwock Jan Fat* v. *White,* 253 U. S. 454; *Johnson* v. *Damon,* 16 F. (2) 65; *Mason* v. *Tillinghast,* 27 F. (2) 580.

Furthermore, the Department had in its possession but did not consider or incorporate into its record evidence which established that a competent examination would not have detected the existence of these diseases at the time of embarkation. This evidence consisted of the certificate of a doctor chosen by the American Consul and annexed to the alien's immigration visa which could not have been issued, under the regulations, unless the alien had been certified to be free from the prohibited diseases and disabilities. The Consular Regulations (R. 205-212), Sections 162 and

164 (R. 207), provide that all immigrants are required to present medical certificates showing "completely, correctly and conclusively their physical condition * * *," and further, "No certificate will be accepted unless it has been issued by a reputable physician and unless it is complete in all respects needful in the premises." These rules were prescribed by the Secretary of State on the recommendation of the Secretary of Labor (8 U. S. C. 222). This certificate came into the possession of the Department of Labor on the arrival of the alien and was sent to Washington (Rule 3, Subdivision G, par. 3, Regulations of July 1, 1925, appendix *infra*).

Likewise a sworn statement on the ship's manifest signed by the ship's doctor establishing that Fusco had been examined before embarkation and showed no evidence of disease, although in the possession of the Department, was not considered. This certificate is provided for in the Statute itself (8 U. S. C., Sec. 149). The certificate of the examining doctor at Ellis Island is likewise contemplated by statute, but it is declaratory only of the condition on the date of examination after arrival.

It thus appears that three statutory medical certificates were issued, two speaking of a fact and the third speaking of an opinion derived from a fact. All had come into the possession of the Department. The Secretary's decision ignored the factual certificates and considered itself bound by the opinion certificate. This lawless practice was not commented on by the lower courts. Such departure from the course of legal procedure should be corrected. *Chin Yow* v. *United States*, 208 U. S. 8.

Failure to incorporate into the record of an administrative proceeding, all of the evidence which was before

the administrative officer, in itself, justifies judicial review. *Kwock Jan Fat* v. *White* (1920), 253 U. S. 454.

By treating the opinion in the so-called "official medical certificate" as conclusive, the Secretary of Labor in effect delegated his entire power of determining liability for fines under this section to the doctors of the American Health Service who made the examinations.

In addition to this, he left to subordinates in his office the function of granting a semblance of hearing.

That is shown by the decision in the *Fusco* case which was written by J. W. Browning, signed by Harry E. Hull, Commissioner General, and approved *pro forma* by W. W. Husband, second assistant secretary (Rec. 277-278). The Secretary himself took no part in the consideration of that case or any of the others (Rec. 132-133).

The imposition of the fine was a function of a judicial nature, committed by the Statute to the personal judgment of the Secretary of Labor, and could not be delegated.

Runkle v. *United States*, 122 U. S. 543;
New Jersey Wholesale Drug Co. v. *Brown*, 289 Fed. 108;
Bay State Wholesale Drug Co. v. *Potter*, 277 Fed. 529.

On this point the Court in *Runkle* v. *United States, supra,* made the following observations, page 557:

"Here, however, the action required of the President is judicial in its character, not administrative. As Commander-in-Chief of the Army he has been made by law the person whose duty it is to review the proceedings of courts-martial in cases of this kind. This implies that he is himself to consider the proceedings laid before him and decide

personally whether they ought to be carried into effect. Such power he cannot delegate."

To summarize; the decision of the Department of Labor was erroneous in law, because it treated the so-called "official medical certificate" as conclusive: the evidence submitted by the Petitioner established conclusively that it had performed the obligation laid upon it by the statute, and the decision imposing the fine was invalid, in any event, because it was not made by the officer designated to make it.

FOURTH POINT.

OTHER ISSUES PRESENTED BY THE RECORD IN SPECIFIC CASES INVOLVE CONSIDERATIONS IN ADDITION TO THOSE HERETOFORE DISCUSSED.

The special class of cases here referred to are those involved in the 5th and 12th causes of action, in which the aliens were going in transit to Canada; the 14th cause of action, in which the alien was a seaman coming to the United States to join the crew of another vessel; the 2nd, 3rd and 13th causes of action, in which the aliens were excluded on the ground that they were suffering from disabilities which might affect their ability to earn a living; the 13th and 15th causes of action, in which the alien was brought to the United States by express governmental permission.

ALIENS NOT COMING FOR ADMISSION.

In the 5th and 12th causes the aliens were not seeking admission to the United States but were going to Canada

and sought only the right to go in transit through the United States (R. 254, 301). Both of the aliens were in possession of transit visas issued by a United States consul (R. 254, 301). Notwithstanding the fact that the aliens did not seek admission to the United States the Board of Special Inquiry undertook to pass upon their admissibility into the United States and ordered them excluded one because afflicted with trachoma, the other because he was feebleminded, but only after the two aliens had been rejected by the Canadian Immigration Officers (R. 255, 303).

In the 14th cause of action the alien was a seaman coming to the United States together with other members of the crew of the *S.S. Pennsylvania* under contract with the owners of the vessel to serve on the vessel for a voyage to Italy (R. 339, 340, 341). The alien did not seek admission to the United States but asked only the right to transship to the *Pennsylvania* (R. 341). Again the Immigration Authorities although not called upon to do so, undertook to pass upon the admissibility of the alien and ordered his deportation (R. 341).

The statute provides that it shall be unlawful to "bring to the United States" certain classes of aliens. In order to determine whether a steamship company which transports to the United States aliens who do not seek admission as immigrants (*i. e.* non-immigrants) falls within the prohibition of the statute it is necessary to look to the purpose of the statute.

The 1917 Act is entitled as an "Act Regulating Immigration of Aliens to and Residence of Aliens in the United States."

The 1924 Act is entitled an "Act to Limit the Immigration of Aliens to the United States and for Other Purposes."

The words "bringing an alien to the United States" were construed in the case of *Taylor* v. *United States*, 207 U. S. 120, in which it was said:

"The reasoning is not long. The phrase which qualifies the whole section is, 'bringing an alien to the United States.' It is only 'such' officers of 'such' vessels that are punished. 'Bringing to the United States,' taken literally and nicely, means, as a similar phrase in Section 8, plainly means, transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back, and merely as incident to employment on the instrument of transport."

Clearly the intentions of Congress in passing the act was to bar diseased aliens and aliens who were affiicted with a physical disability which would affect their ability to earn a living because such aliens would be undesirable residents and citizens of the United States. Such a reason does not apply to aliens coming to the Untied States merely for the purpose of transit through the United States to another country or to transship in the Harbor of New York.

The reasoning of the department and of the lower courts that Congress intended by this Section to protect our national health from contagion is unsound. The alien in the 12th cause of action was excluded for feeblemindedness which is not contagious and Petitioner was fined.

The same section which defines the penalty for bringing diseased aliens to the United States defines with the same words a penalty for bringing an illiterate alien, an alien afflicted with a physical defect or an alien excluded because a native of the continent of Asia. Certainly illiteracy, ordinary physical defects and yellow skins are not contagious.

The Department itself recognizes that bringing illiterate aliens for transit is not a violation of the Act, because it does not even require literacy tests of aliens going in transit. Rule 2, Subd. M, par. 1e (Rules Jan. 1, 1930; Appendix *infra*).

It is desirable, of course to prevent the transit of aliens or anyone else for that matter through the United States who may be suffering from contagious disease but as pointed out in the case of *Dollar Steamship Line* v. *Elting*, 51 Fed. (2d) 1035, that is a matter for quarantine regulation under the quarantine laws. In that case an alien holding a through ticket to Cuba was rejected at New York because suffering from trachoma and a fine was imposed on the steamship company by the Department of Labor. It was held by the Circuit Court of Appeals for the Second Circuit that the alien was not brought to the United States within the prohibition of the statute and that the fine was improperly imposed.

The fact that Congress did not intend that fines provided for in this section should be applicable to the bringing of aliens not applying for admission to the United States is demonstrable by other provisions of the Act.

Section 3 of the Act (8 U. S. C. 136) provides for the exclusion "from admission into the United States" of certain classes of aliens including illiterates, diseased aliens, Asiatics, &c.

In a proviso to the same section (8 U. S. C. 136 Q) it is provided:

"That the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribe conditions, including exactions of such bonds as may be necessary, to control and regulate the admission

and return of otherwise inadmissible aliens applying for temporary admission."

It is clear therefore that the term "admission", as used in the first sentence of Section 3 contemplates those applying for admission as immigrants to the United States, and does not apply to those seeking only temporary admission in contemplation of departure or for the purpose of going in transit.

It follows that Section 9 and the same section as amended by Section 26 of the 1924 Act did not contemplate the imposition of penalties for bringing aliens to the United States for such temporary purpose, for that section provides:

"That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to Section 3 of this act exempted from the excluding provisions of said section." Cf. *Dollar Steamship Co.* v. *Hyde*, 23 F. (2d) 910.

It is submitted that Congress clearly did not intend Section 9 to be applied to cases of transit aliens or to the transportation of any aliens not seeking residence within the United States. *Taylor* v. *U. S., supra; Dollar S.S. Co., Lt.* v. *Elting, supra; Cunard Steamship Co.* v. *Stranahan,* 134 Fed. 318.

Aliens Having Physical Defects.

In the 2d, 3d and 13th causes of action the fines were imposed because the alien was afflicted with a physical defect which might affect his ability to earn a living. In addition to the question of discoverability of the defect heretofore discussed there is the question as to whether

the defect if discovered would affect the ability of the alien to earn a living. In the 2d cause of action the alien was certified as being afflicted with an abnormal systemic condition characterized by a positive Wasserman reaction in the blood serum (R. 232). The Department of Labor by a subsequent decision of the Surgeon General recognized that such a condition could not properly be said to have been detectable by a competent medical examination at the foreign port of embarkation (R. 204). Clearly, this fine was improperly imposed.

In the 3d cause of action the alien was certified as afflicted with valvular disease chronic cardiac (R. 240). The alien testified before the Board of Special Inquiry that he was always working and was never sick (R. 241).

In the 13th cause of action the alien was blind (R. 317) but was coming to the United States temporarily not to earn a living but to study in the New York Institute for the Education of the Blind (R. 311). There was ample evidence that there was no danger of his becoming a public charge (R. 330-332). In such cases the Secretary has express authority to admit on bond (8 U. S. C. 158).

It cannct be said that every physical defect is one which might affect one's ability to earn a living. Whether it may have that effect or not depends upon many circumstances, including the nature of the defect, the means of livelihood ordinarily employed by the alien, and the judgment of the officials whose duty it is to determine the question. It is not a question solely for medical consideration.

The question can only be determined finally by the Board of Special Inquiry upon arrival, and to impose the burden of determining that question upon the steamship company is to deny to the alien his right to be heard as to his admissibility by the duly constituted authority.

The possession of the visa by the United States consul is evidence that in the opinion of an officer of one department of the Government the alien was admissible.

As shown by the letter of the Department of Labor in the case of *Compagnie Francaise a Vapeur* v. *Elting*, 19 F. (2d) 773, the department declines to pass upon the admissibility of the alien until after examination at the port of arrival.

Where the question of admissibility is of a *quasi* judicial nature, which is finally determinable only after arrival the right of a steamship company to bring such aliens here for examination should be uncontestable. *Compagnie Francaise a Vapeur* v. *Elting, supra.*

That the admissibility of such aliens presents a question of *quasi* judicial nature is further established by the fact that they may be admitted in the discretion of the Secretary of Labor, notwithstanding their physical defects, on the conditions prescribed in Section 21 of the 1917 Act (8 U. S. C. 158).

ALIENS COMING BY SPECIAL PERMISSION.

The fine involved in the 13th cause of action was imposed on the ground that the alien was blind, a disability which might affect his ability to earn a living. That he was blind was evident, but he claimed to be coming to the United States as a student. He held an immigration visa issued by the American Consul under section 4 (e) of the Act of 1924 (8 U. S. C. 203), which exempts from the quota students going to accredited schools.

Such a school must be one which has been approved by the Department of Labor. A list of such accredited schools is supplied to all American Consuls, and under the Consular instructions a consul is not permitted to grant non quota visas under section 4 (e) except to per-

sons who are able to satisfy him that they are in good faith coming to such an accredited school.

The decision of the Department imposing this fine (R. 306) shows that the real reason for imposing the fine was not the blindness of the alien but the fact that the alien had not been enrolled as a student in a school approved for aliens by the Secretary of Labor (R. 307). That error cannot be charged to Petitioner. That question could only be properly determined either by the American Consul pursuant to Consular Instructions 140, 141, 142 (R. 205, 206) or by Immigration Officials at the port of arrival. The case therefore properly falls within the principles of *Compagnie Francaise* v. *Elting,* 19 F. (2d) 773, and *Spanish Royal Mail Line Agency, Inc.* v. *United States,* 45 F. (2d) 404.

That this alien satisfied the American Consul at Naples of his right to come to the United States as a student is shown by the consul's visa and by the testimony of William Gargiulio of the American Consulate at Naples, which is on file with the Clerk of this court. Mr. Gargiulio testified that he was unable to find the application and supporting documents which were presented for this visa, but said that he remembered the case very well, and in answer to questions put to him testified as follows:

"Q. Can you state definitely that at the time he applied for a visa he was definitely enrolled as a student in a school of the United States approved by the Secretary of Labor? A. As far as I remember, yes.

"Q. What makes you remember that? A. Because otherwise he would not have got a visa as a student teacher."

The fine involved in the 15th cause of action was imposed on the ground that the alien was an imbecile. The

father of the alien, an American citizen, had made special application to the Labor Department for permission to bring his son to the United States, and in that application disclosed his condition (R. 394). The Labor Department specially authorized the American Consul in Italy to grant a visa to this alien, and he was accepted for transportation on the faith of the visa granted pursuant to such special authorization (R. 399-403). These documents were evidence either that the Department had already decided that this alien was admissible or had reserved the question for final determination at the port of arrival. By this an estoppel had been created against the imposition of the fine. *Spanish Royal Mail Line Agency, Inc.* v. *United States,* 45 F. (2d) 404; *Compagnie Francaise* v. *Elting,* 19 F. (2d) 773.

Conclusion.

The decision of the Circuit Court of Appeals should be reversed as to all causes of action except the 9th and 11th and the case should be remanded to the District Court with instructions to enter judgment for the Petitioner.

Respectfully submitted,

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Joseph Fitzgerald Luley,
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Of Counsel.

October, 1932.

APPENDIX.

Section 9 of the Immigration Act of 1917 as amended by Section 26 of the Immigration Act of 1924. Amendments of 1924 printed in italics.

SEC. 9. That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $200 (*$1000*), and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a living, as contemplated in section three of this act, and if it shall appear to the satisfaction of the Secretary of Labor

that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $25 (*$250*), and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien who is excluded by the provisions of section three of this act because unable to read, or who is excluded by the terms of section three of this act as a native of that portion of the continent of Asia and the islands adjacent thereto described in said section, and if it shall appear to the satisfaction of the Secretary of Labor that these disabilities might have been detected by the exercise of reasonable precaution prior to the departure of such aliens from a foreign port, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $200 (*$1000*), and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. *If a fine is imposed under this section for the bringing of an alien to the United States, and if such alien is accompanied by another alien who is excluded from admission by the last proviso of section 18 of this act, the person liable for such fine shall pay to the collector of customs, in addition to such fine but as a part thereof, a sum equal to that paid by such accompanying alien for his transportation from his initial point of departure indicated in his ticket,*

to the point of arrival, such sum to be delivered by the collector of customs to the accompanying alien when deported. And no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fines, or while the fines remain unpaid, nor shall such fines be remitted or refunded: Provided, That clearance may be granted prior to the determination of such questions upon the deposit of a sum sufficient to cover such fines *or of a bond with sufficient surety to secure the payment thereof, approved by the collector of customs:* Provided, further, That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to section three hereof exempted from the excluding provisions of said section.

Rule 3, Subdv. G, par. 3, Rules of July 1, 1925.

"Par. 3.—When an immigrant has been excluded from admission to the United States the immigration visa shall be retained at the port of arrival until the deportation or return of the alien actually takes place, whereupon the visa shall be forwarded forthwith to the department with an indorsement in the space designated 'Record on appeal' showing that alien was rejected and returned, the date of such return, and signed by the proper immigration official."

Rule 2, Subdv. M, par. 1, Rules of Jan. 1, 1930.

"Paragraph 1. The following classes of aliens over 16 years of age are exempted by law from the literacy test; viz:

"(a) Persons who are physically incapable of reading.

"(b) Persons of any of the following relationships to United States citizens, admissible aliens, or legally admitted aliens, when such persons are sent for or brought

in by such citizens, admissible aliens, or admitted aliens: Father, if over 55 years of age; grandfather, if over 55 years of age; wife; mother; grandmother; unmarried daughter; or widowed daughter.

"(c) Persons seeking admission to the United States to avoid religious persecution in the country of their last permanent residence.

"(d) Persons who have been lawfully admitted to the United States and who have resided therein continuously for five years and who have returned to the United States within six months from the date of their departure therefrom.

"(e) *Persons in transit through the United States.*

"(f) Persons who have been lawfully admitted to the United States and who later go in transit from one part of the United States to another through foreign contiguous territory. The period an alien may remain in foreign contiguous territory while in transit under this exemption shall be limited to 60 days. An alien may leave and enter the United States at the same port and still be in transit within the meaning hereof.

"(g) Exhibitors and employees of fairs and expositions authorized by Congress."

FILE COPY

APR 29

Supreme Court of the United States

OCTOBER TERM, 1931. No [redacted] 48

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI,
Petitioner,

against

PHILIP ELTING, Collector of Customs of the Port of New York,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF.

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Supreme Court of the United States

LLOYD SABAUDO SOCIETA ANOMIMA PER AZIONI, Petitioner, *against* PHILIP ELTING, Collector of Customs of the Port of New York, Respondent.	OCTOBER TERM, 1931. No. .

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Petitioner, Lloyd Sabaudo Societa Anonima Per Azioni, prays that a writ of certiorari issue to review a judgment of the Circuit Court of Appeals for the Second Circuit (R. 638) entered February 8, 1932, affirming in part a judgment (R. 41) of the United States District Court for the Southern District of New York.

Fifteen causes of action for recovery of fines imposed under the Immigration Laws were stated. (R. 1-31). Twelve were dismissed. On cross appeals the Circuit Court of Appeals dismissed a thirteenth cause of action.

JURISDICTION.

The order on mandate below was entered on February 8, 1932, (R. 638).

Jurisdiction of this Court is provided by 28 U. S. C. s. 347 (a).

Opinions Below.

The opinion of the Circuit Court of Appeals was written by Judge Chase, Judges Manton and A. N. Hand concurring. (R. 633-636). It is reported 55 F. (2d) 1048, 1932 AMC 244; The opinion of District Judge Patterson appears at pages 535-552 of the record and is reported 45 F. (2d) 405, 1930 AMC 1620.

Statutes Involved.

The statutes involved are Section 9 of the Immigration Act of February 5, 1917 and the same section as amended and re-enacted in the Immigration Act of 1924 (8 USC Sec. 145). The only change made in 1924 was to increase the amount of the fines. In substance it makes it unlawful for a transportation company to bring to the United States from a foreign port an alien who may be suffering from one of the diseases or disabilities therein enumerated. It then provides:

"If it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company * * * shall pay * * * the sum of $1000, and in addition a sum equal to that paid by such alien for his transportation."

Questions Presented.

1. Whether exactions of fines by the Secretary of Labor under the above sections are subject to judicial review in cases in which it appears as a matter of fact that the aliens were subjected to competent medical examinations before embarkation and that such examinations did not disclose the existence of any disease or disability which might bar the aliens from admission to the United States.

2. Whether the same section, as amended, raising the fine to $1,000.00, as construed and applied by the Secretary of Labor in imposing fines, is constitutional.

3. Whether $1,000 penalties may be legally exacted from Steamship Lines by internment of vessels whenever an official of the Department of Labor forms a belief that the alleged disease of an immigrant was discoverable by competent medical examination abroad, when such officer has no special technical knowledge on the subject and when no real hearing is had, and when such officer considering himself an appellate court purports to consider as evidence proof submitted by the Line, but in fact relies solely on a certificate of doctors attached to the Public Health Service, that the disease might have been discovered by competent medical examination before embarkation, and ignores other medical certificates made at the time of embarkation declaring that the disease did not exist at that time.

The Facts.

One of the causes of action related to the case of Giuseppe Fusco (the tenth cause of action). As disclosed by the record of the proceedings before the Secretary of Labor (R. 415-441), Fusco, aged 53, resided in Mezzano,

Caserta, Italy, with his wife and six of his 8 healthy children. A son, an American citizen (R. 436), in comfortable circumstances (R. 441), and a married daughter, resided in Phoenixville, Pennsylvania. In the summer of 1926 Fusco decided to return to the United States, in which he had resided for 15 years, since 1901, having freely entered and left the country 5 times, to visit his American children (R. 435).

He was examined by surgeons of the Royal Italian Emigration Service in Naples, found free from tuberculosis or any symptoms of this disease, and was granted an Italian passport on September 20, 1926 (R. 423, 435). The American Consul at Naples issued to Fusco a quota visa on October 1, 1926, to which was attached a certificate of a competent practicing physician who enjoyed the confidence of the American Consul, which certified that Fusco was free from any contagious disease or any other physical defect which might debar him from admission to the United States (R. 422). This visa and medical certificate came into the possession of the Secretary of Labor by virtue of his rules (Rule 3, subdivision G, par. 3, Regulations, January 1, 1930). Such a visa under the 1924 Act is a separate document based upon a verified application by the alien of the character set forth in the record, page 299 (Act Secs. 2 and 7).

Just before embarkation Fusco was examined by petitioner's medical examiners, who also found him to be free from tuberculosis or any symptoms of the disease (R. 423).

Fusco embarked on petitioner's *S. S. Conte Rosso* at Naples on October 13, 1926, and arrived at New York October 23 (R. 434).

The foregoing facts were supplemented by depositions and the testimony of witnesses offered at the trial, which established:

That at Naples the petitioner maintained regularly two and sometimes three resident physicians, whose duty it was to examine all aliens seeking passage to the United States; that a place had been established, called the Emigrant House, properly equipped for such examinations, and at that place the company physicians under the supervision of a doctor attached to the Royal Italian Emigration Service, made careful physical examinations of all immigrants the day before embarkation. At these examinations notations were made of any case suspected of disease or disability, and on the day of sailing all immigrants were again examined at the pier, special attention being given to the cases noted as doubtful.

The final examination at the pier was conducted by a commission authorized by the Italian law, which consisted of at least three doctors and usually two laymen. At that examination every person found to be afflicted with or even suspected of being afflicted with any disease or disability which might bar his admission to the United States, was refused permission to sail. This was no empty formality as is shown by the numerous rejections referred to in the testimony of Dr. Valenzi (R. 62-66).

In addition to the foregoing examinations each alien, as a prerequisite to the granting of a visa, had been required by the American Consul to present a medical certificate issued by a physician specially designated by the Consul to make such examinations and all quota immigrants had been required by the Italian Law to undergo physical examinations as a prerequisite to the issuance of passports.

The result was that before embarkation, every quota immigrant had been submitted to four physical examinations and every non-quota immigrant had undergone three such

examinations (see depositions of Doctors Musu, Izzo and Reale on deposit with the Clerk of this Court).

The examinations at the Emigrant House included clinical examinations by such means as the stethoscope, microscope, magnifying glass, Wasserman test, &c., by outside specialists, to whom the immigrants were sent, whenever the examining doctor suspected that a disease might exist which might be discovered by such methods (Deposition, Dr. Reale, pp. 10-13).

These examinations were conducted in such a manner and with such minuteness that they would have disclosed the existence of any disease or disability which would bar admission to the United States if the disease or disability existed at that time (Deposition, Dr. Baldovino, pp. 8-9). In reporting to the Italian Emigration Service on the effectiveness of such examinations Dr. Baldovino said:

"No sick man, suffering from an infectious disease, passes unobserved through the various tests of which the examination is composed. The sifting of those fit to embark is a sure one."

Ellis Island itself has deported for diseases or physical disabilities only 116 out of 99,236 carried by this line (R. 112, 165). No question can be presented as to the thoroughness with which Fusco and other aliens were examined (R. 51-3, 118).

Fusco was taken to Ellis Island upon arrival, and on November 1, 18 days after embarkation, was examined there by two doctors who certified him to be "afflicted with *tuberculosis pulmonary chronic* which is not easily curable. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation" (R. 434).

November 4, 1926, Fusco appeared before a Board of Special Inquiry at Ellis Island. He was asked a few formal questions, not touching on his alleged illness, was told that he was excluded and had no right to appeal. Fusco was not represented. The Line was not even notified. November 16, 1926, Fusco returned to Italy.

November 26, about the date Fusco arrived in Italy, the office of the Commissioner of Immigration for the Port of New York, notified petitioner of an intention to impose a fine of $1,000 and to require the refund of $95 passage money, based on the certificate of the examining surgeons, and stated:

"If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed 60 days from the date of this notice for that purpose * * *" (R. 420).

On January 26, 1927, petitioner filed a protest supporting the facts above stated. Duly authenticated certificates of the physicians who made the examinations before embarkation were attached (R. 421-431). This protest and the affidavits of the physicians were accepted by the Department. No criticism was made as to the form of the evidence, nor was the Petitioner requested to amplify it in any respect.

In accordance with the usual practice, the Commissioner of Immigration at New York forwarded the record of the proceedings at Ellis Island, together with the evidence submitted by the Petitioner to the Labor Department at Washington. The proofs were submitted in the usual form (R. 170, 192).

On February 7, 1927, a decision was announced, signed, not by the Secretary of Labor, but by the Commissioner

General and the Second Assistant Secretary, which said in part:

"The protest of the Line * * * has been reviewed, together with the medical certificates forwarded therewith * * *" (R. 415).

The decision recognized that, according to the protest and medical certificates submitted, Fusco had been examined on three separate occasions by competent physicians before embarkation and that no trace of tuberculosis was discovered, and that if in existence at the time of embarkation it was not detectable, it then proceeded (italics ours):

"The alien gave no history of the disease. Indeed he was not questioned with regard thereto, *and the only evidence in the record is the official certificate itself.* The Line's protest, in effect, is merely that the disease was not detected despite three examinations and therefore was not detectable * * *. *It is believed that the evidence placed in the record* by the company is not sufficient to call in question the accuracy of the opinion expressed in the official medical certificate" (R. 415, 416).

The decisions imposing fines were written by John W. Browning, a civil service employee in the Department of Labor, formerly an army officer (R. 184, 186).

Browning, who was put on the witness stand by the Government (R. 184), testified that he did not consider the proof submitted by the Line as evidence (R. 186); that he regarded himself as "an Appellate Court" (R. 191) and considered the protests merely as pleas or comment on the evidence.

The fine and passage refund were paid under protest to the respondent under the duress of his refusal, otherwise, to grant clearance to petitioner's ships (R. 19, 36).

Fusco's story is fairly representative of all cases. In some of the cases there are additional facts which present additional questions. One alien was excluded as an imbecile after having been brought to the United States by special permission of the Department of Labor with knowledge of his condition; another was patently blind but had been granted a visa by the American Consul to come to the United States as a student under a special proviso of the Immigration Law; another was coming to the United States to go in transit to Canada and another alien was a seaman coming to ship foreign. Fines were imposed in all of those cases, and the propriety of such fines depends upon considerations additional to those presented in the case of Fusco.

Proceedings Below.

In a common law trial before Patterson, J., and a jury of one, overwhelming evidence was given in support of the facts above stated both by oral testimony and Italian depositions, showing that the alleged diseases were not discoverable by competent medical examination abroad. The Government, although endeavoring to reserve an objection, joined in offering the depositions (R. 283-284). The trial judge conceded that the testimony tended to show in considerable detail that all passengers were put through at least two examinations by skilled doctors (fol. 1614); but excluded from consideration all evidence not presented to the Secretary of Labor and held that the determination of the Secretary was conclusive on him as to all facts, if there was the slightest evidence in support of his conclusion. He held the certificate of the American doctors to be such support although criticizing it as legal proof. He admitted that

on petitioner's construction of the case of *Oceanic Nav. Co.* v. *Stranahan,* 214 U. S. 320, he should at least try fundamental questions; but declined to do so on the ground that the secretary's "satisfaction" and not the actual fact of discoverability was the fundamental, or as he called it, the crucial question. He did hold, however, that if American doctors had made the examinations in Italy, the decision of the department could not be sustained.

The Circuit Court of Appeals affirmed, holding that the fact of actual examinations was immaterial because "what will satisfy the secretary in that regard", is all that is necessary to impose the fine.

Reasons for Granting the Writ.

1. The questions presented are of great importance to steamship companies because of the financial burdens which have been and are being placed upon them by the unbridled action of the Secretary of Labor in exacting fines without just cause. It is also important that correct principles of administrative action in imposing fines of this character should be authoritatively and finally established for the guidance of courts and administrative officers throughout the United States.

2. It is evident on the face of the opinions of the courts below that they have abdicated to administrative officers the final determination of questions which the courts should reserve for themselves, and that in so doing they have relied upon a misconception of certain dictum in the case of *Oceanic Steam Navigation Co.* v. *Stranahan,* 214 U. S. 320, and have ignored restrictions upon administrative action, plainly declared by this court in such cases as *Crowell* v. *Benson,* 285 U. S. (Decided Feb. 23, 1932.)

3. The opinion in the Stranahan case should be clarified and the constitutionality of the provision under which the fines have been imposed should be determined.

DELBERT M. TIBBETTS,
Counsel for Petitioner.

KIRLIN, CAMPBELL, HICKOX, KEATING & MCGRANN,
GASPARE M. CUSUMANO,
Attorneys for Petitioner.

I hereby certify that I have examined the foregoing petition, that in my opinion it is well founded and entitled to the favorable consideration of the Court and that it is not filed for the purpose of delay.

DELBERT M. TIBBETTS,
Counsel.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

DELBERT M. TIBBETTS, being duly sworn, says:

That he is one of the attorneys for the petitioner herein and that the foregoing petition is true to the best of his knowledge, information and belief.

DELBERT M. TIBBETTS

Sworn to before me this
27 day of April, 1932.

NICHOLAS D. LAMORTE
Notary Public

Supreme Court of the United States

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI,
Petitioner,

against

PHILIP ELTING, Collector of Customs of the Port of New York,
Respondent.

OCTOBER TERM, 1931.
No. .....

BRIEF IN SUPPORT OF PETITION.

The facts involved and the proceedings in the lower courts are set forth fully in the petition.

FIRST POINT.

THE DECISIONS OF THE LOWER COURTS INVOLVE A MISCONCEPTION OF THE RULES ESTABLISHED BY THIS COURT FOR THE REVIEW OF ADMINISTRATIVE DECISIONS.

Twenty-five years of Departmental practice have carried the Department far from the ample bounds set for it by the decision in *Oceanic Steam Navigation Co.* v. *Stranahan* (1909), 214 U. S. 320. The Act considered in that case has been repealed; new Acts and larger penalties have intervened. The new law, as applied in the almost daily practice illustrated in this case, should be tested by principles of the *Stranahan* case both as to construction and constitutionality.

It has been consistently held by this Court that in reviewing administrative decisions a court should try *de novo* any fact of jurisdictional or fundamental character upon which the power of the administrative officer depends. *In re Fassett* (1891), 142 U. S. 479; *Ng Fung Ho* v. *White* (1922), 259 U. S. 276; *Ohio Valley Co.* v. *Ben Avon Borough* (1920), 253 U. S. 287; *Federal Trade Commission* v. *Raladam Co.* (1931), 283 U. S. 643; *Federal Trade Commission* v. *Klesner* (1930), 280 U. S. 19; *Crowell* v. *Benson,* February 23, 1932, 285 U. S.

The section under consideration in this case does two things. It declares it to be unlawful to bring an alien having certain diseases to this country, and it makes the same act a punishable offense when the existence of the disease was discoverable by a competent medical examination abroad.

While the language of the section is somewhat ambiguous, its history makes it clear that the intent of Congress was to impose upon steamship companies the obligation of subjecting all immigrants to examinations at the hands of competent medical examiners before being allowed to embark; and to empower the Secretary of Labor to impose fines in cases in which the Steamship Companies fail to observe that requirement and in which it appears to the Secretary that a disease existed and might have been discovered if the required examination had been made.

A section of this character first appeared in the Immigration Act of 1903, and it has been reenacted without material change, except as to the amount of the fine, which has been raised from $100 in the 1903 Act to $1,000 and refund of passage money in the 1924 Act.

This section as it appeared in the 1903 Act was before this Court in the case of *Oceanic Steam Navigation Co.* v. *Stranahan,* 214 U. S. 320, which involved solely the question of the constitutionality of the provision. In upholding its constitutionality, this Court construed that provision as follows (p. 332) (italics ours):

"The power to impose the exaction which the statute confers on the Secretary is lodged in that officer *only* when it results from the official medical examination at the point of arrival not only that an alien is affilicted with one of the prohibited diseases, but that the stage of the malady as disclosed by the examination establishes that the alien was suffering with the disease at the time of embarkation, and that such fact would have been then discovered *had* the medical examination been then made by the vessel or its owners, as the statute requires."

In support of that construction, this Court quoted from the report of the Senate Committee on Immigration which said of the provision in question (italics ours):

"This sufficiently guards the transportation lines from an unjust and hasty imposition of a penalty, insures a careful observance of the law, and leaves in their own hands the power to escape *even a risk* of the fine being imposed, since they can refuse to take on board even the most doubtful case until certified by competent medical authority to be entirely cured."

If the Line is protected by a certificate that the alien is cured, it is surely protected by a certificate that he was not and had not been sick.

This Court then said (p. 334):

"It may not be doubted that it is not open to discussion that the statute as thus construed was within the power of Congress to enact."

That decision was announced in 1909. That interpretation by this Court and by the Senate Committee of the provision as it appeared in the 1903 Act necessarily attached to the provision as it was reenacted in subsequent legislation.

So construed, the Secretary is without power to impose fines if it appears as a matter of fact that the required medical examinations were made before embarkation. In this case, evidence had been submitted to the Secretary which established that the required examinations had been made before embarkation and that the diseases did not exist or were not then detectable. If the trial court doubted the sufficiency of that evidence to establish the fact, it should have received and considered the additional evidence submitted at the trial.

The additional evidence was excluded by the trial court and the exclusion was upheld by the Circuit Court of Appeals on the theory that the satisfaction of the Secretary of Labor is the fundamental fact. The Court below said (55 F. (2d) 1050):

"The only real issue of fact related to the decision of the Secretary of Labor on the question of detectability of the disability abroad * * * Determination of the fact of foreign detectability of an excluding condition has been left to what will satisfy the Secretary of Labor in that regard. This means that whatever the Secretary of Labor decides, provided his decision is neither arbitrary or capricious, is final."

Furthermore, the decision imposed upon transportation companies the liability of an insurer, for the Circuit Court of Appeals said:

"It takes no account of any mistakes an examiner might make and still be a competent man. The burden placed upon a steamship company transporting aliens to our shores is not satisfied by its employing competent examiners to make examination of aliens at the time of embarkation, but it is charged with whatever knowledge it would obtain from a competent examination of each alien at that time."

That Court also appeared to be of the opinion that a transportation company is not entitled to a hearing of any kind, for in this case it said:

"Nor was it error to treat the certificates of medical examiners as evidence of the facts as therein stated."

And in the later case of *United States of America* v. *Steamship Presidente Wilson* (decided March 14, 1932, not yet reported) the same court said:

"On the other hand in *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 321, the finding of the Secretary, based upon the certificate of his medical examiners that aliens were afflicted with contagious diseases whose existence could have been detected on embarkation, was held to be so absolute that the carrier might be deprived of a hearing."

The lower courts appear to have misconceived what was before this court for determination in the Stranahan case and to have erroneously applied certain language in that case which is not pertinent to the situation presented in this case.

In the Stranahan case the Line did not deny that the disease existed at the time of arrival or that the Steamship Company had failed to cause any examinations to be made before embarkation, or that the disease may have existed

at embarkation, 155 Fed. 428-429. The plaintiff in that case relied solely upon the contention that the Statute or the procedure under it or both were unconstitutional. All other questions were treated as immaterial.

On the facts so presented this Court pointed out that the Act might be upheld as constitutional, even though the certificate of the medical officers should be treated as conclusive of the condition of the alien for the purpose of imposing fines (p. 342).

The statute did make such a certificate conclusive of the condition of the alien upon arrival so far as the exclusion of the alien was concerned (8 U. S. C., Sec. 153, last proviso). It was contended by the plaintiff, in that case, that although the certificate might be made final so far as exclusion was concerned, it could not be made final for the purpose of imposing a penalty.

On that point the court remarked that conclusive effect might be constitutionally given to the medical certificate for the purpose of imposing a penalty "for the *negligent* bringing in of an alien" (p. 342).

Considered in connection with the earlier statement that the certificate might be made conclusive of the condition of the alien upon arrival, it seems evident that the later statement with regard to its effect with relation to imposing a penalty was intended to treat the certificate as conclusive of the condition upon arrival and not of the supposed condition at the time of embarkation. The statement is, however, limited to cases of the negligent or wrongful bringing in of the alien. It has no application to cases like the present in which admittedly the required examinations had been made and there is no evidence of negligence or wrongful act.

The lower courts, however, appear to have construed this language as making the medical certificate or opinion conclusive of the condition of the alien not only upon arrival, but also at the time of embarkation, notwithstanding proof of competent examinations and non discoverability abroad. There is no authority either in the statute or in the language of the Stranahan case which supports any such proposition.

On these misconceptions of the Stranahan case, and disregarding the rule firmly established by this Court providing a judicial review of fundamental or jurisdictional facts, the lower courts denied the petitioner the right to make proof of its compliance with the law and consequent immunity from the fines which had been imposed.

SECOND POINT.

THE DECISION IN THE STRANAHAN CASE AS TO THE ACT OF 1903 DOES NOT SUPPORT THE CONSTITUTIONALITY OF THE ACT OF 1917 OR 1924 AS CONSTRUED AND APPLIED IN THIS CASE.

The Stranahan case (214 U. S. 320) was a direct challenge to the power of Congress; all the inferences of fact were conceded in favor of the government. The court held the Act of 1903 within the power of Congress to regulate Immigration under the Commerce Clause.

And the Act was held not to be violative of the due process clause as construed and applied.

In the first aspect, the section was held not to be faulty as imposing criminal punishment without criminal trial. Secondly the court held it was not faulty as an Act providing for enforcement of penalties by mere administrative measures, without any judicial trial, in cases where there was no evidence of compliance with the law by the carrier.

In this connection the court determined that the $100 penalty therein declared was not criminal punishment because of the purported Congressional intent. The court said (337) (italics ours):

"* * * its various sections accurately distinguish between those cases where it was *intended* that particular violations should be considered as criminal * * * and those where it was *contemplated* that violations should not constitute crime, but merely entail the infliction of a penalty * * *."

If it is the law that Congress can, by legislative composition, indicate that a financial exaction of $1095 is a penalty which may be committed to the exclusive determination of an administrative officer, then the present Act must be upheld on this point.

The Stranahan case does not assert any such proposition; in the consideration of the second mentioned aspect of due process, the Chief Justice said that Congress might grant exclusive administrative power "to impose appropriate obligations and sanction their enforcement by *reasonable money penalties*" (339). The Chief Justice was considering a $100 penalty; the Act he considered was repealed; the fine now under consideration is $1095, practically the same amount this court held excessive for administrative enforcement in *Lipke* v. *Lederer* (1922), 259 U. S. 557.

Congress, itself, has recognized in this Act that $200 may be suitable punishment for a misdemeanor (8 U. S. C., s. 146).

The imposition in this case must fall; it is condemned by the test applied by this court in the Lipke, and Strana-

han cases, and declared in *Schick* v. *United States* (1904), 195 U. S. 65, 68: "The truth is the nature of the offense and the amount of punishment prescribed rather than its place in the statutes determine whether it is to be classed among serious or petty offenses, whether among crimes or misdemeanors." The only alternative to unconstitutionality is construction to permit judicial process. In either event, the decision below should be brought in line with the decisions of this court.

The Circuit Court of Appeals ignored the point; the District Court ignored *Lipke* v. *Lederer*.

It is submitted that the Act as construed and applied by the Secretary of Labor and the lower courts in this case, is unconstitutional.

THIRD POINT.

EVEN IF THE POWER OF FEDERAL COURTS IN THIS CASE WERE LIMITED TO REVIEW AS TO ARBITRARINESS, THE POWER WAS NOT EXERCISED IN ACCORDANCE WITH LEGAL PRINCIPLES.

Administrative determinations even where discretionary are subject to judicial principles. The final judgment is legally effective only when arrived at by real interpretation of all considerations presented. A department must weigh all considerations presented, and must afford actual consideration to the matters it purports to receive. In short "these tribunals are not bound by the rules of evidence applicable in a jury trial. But they are bound by rules of reason and logic—by what is commonly referred to as common sense." *Mason* v. *Tillinghast* (C. C. A. 1) 27 F. (2d) 580.

In arriving at its amazing "belief" that the disease was discoverable at embarkation, when the actual truth as shown was that the disease was not discoverable by competent medical examination, the Department utterly ignored evidence put in its possession by statute and by the petitioner. Moreover, it purported by its orders and practice to accept matters as evidence from the accused, which in fact it did not consider.

The medical certificate attached to the visa came into the hands of the Department. By Consular Regulation (R. 294, 295), sections 162, 164, proposed by Secretary of Labor, this "completely, correctly and conclusively" showed that Fusco did not have tuberculosis when the passport visa was granted. Although this was evidence sanctioned by Regulation, it was not considered by the Secretary or incorporated in his minutes of the fine proceedings.

Likewise a sworn statement on the ship's manifest signed by the ship's doctor establishing that Fusco had been examined before embarkation and showed no evidence of disease, although in the possession of the Department, was not considered. This certificate is provided for in the Statute itself (8 U. S. C. Sec. 149). The certificate of the examinating doctor at Ellis Island is likewise contemplated by statute, but it is declaratory only of the condition on the date of examination after arrival.

It thus appears that three statutory medical certificates were issued, two speaking of a fact and the third speaking of an opinion derived from a fact. All had come into the possession of the Department. The Secretary's decision ignored the factual certificates and considered itself bound by the opinion certificate. This lawless practice was not

commented on by the lower courts. Such departure from the course of legal procedure should be corrected.

Failure to incorporate into the record of an administrative proceeding, all of the evidence which was before the administrative officer, in itself, justifies judicial review. *Kwock Jan Fat* v. *White* (1920), 253 U. S. 454.

Moreover the department purported by its order to consider what it called "the evidence placed in the record by the company" consisting of the protest and the affidavits of two doctors certifying that Fusco had been examined prior to embarkation. By the confession of the very man who wrote the decision, that statement was misleading. He considered himself an appellate court (R. 191), and considered the protest merely as comment on the evidence (R. 192) and not as evidence (R. 186). Protests were the conventional means of presenting evidence to the department. Not one word appearing in any decision of the Department attacks the form of proof. It was simply ignored. This violates not only rules of judicial procedure, but of common convention.

The District Court, ignoring the evidence of the visa and manifest, and excluding the other evidence offered at the trial, sustained the holding of the Secretary as not arbitrary, and in effect held that the Ellis Island certificate was conclusive regardless of whatever evidence there was the other way. That conclusion was upheld by the Circuit Court of Appeals.

Neither of these courts recognized that: "insufficient evidence is, in the eye of the law, no evidence" and that "when we say that there is no evidence to go to a jury, we do not mean that there is literally none, but that there is none that ought reasonably to satisfy a jury that the

fact sought to be proved is established". These are statements of judicial rules of thumb quoted in *Matter of Case* (1915), 214 N. Y. 199, 203.

A department's exaction is not placed beyond judicial recall every time an employee expresses an opinion in relation thereto. The lower courts have failed to apply the common judicial test to the procedure of the department.

The facts stated in the protest, and the certificates submitted therewith were proper proof of the matters alleged. This has been so held. *Bermuda & West Indies S. S. Co.* v. *Elting* (S. D. N. Y.) 45 F. (2d) 411. The district judge conceded our proof established the truth and conceded that a certificate of an American Consular doctor made about the time of embarkation in accordance with present practice, would be conclusive evidence of non-discoverability at that time.

The examinations shown by the evidence in this case were of the same character as those conceded to be sufficient by the district judge, except that they were made by Italian doctors.

The district court must accept the truth of the statements of the protest. It could not decline the legal proof of the true facts in the case because not submitted in that form to the department and at the same time measure the proof before the Secretary by judicial standards. Both courts comment on the technical deficiencies of petitioner's proof. The court must have failed to accept the evidence purported to have been accepted by the Department; or must have applied the scintilla of evidence rule. In no other way could they support a finding on a concededly disproven point.

The departmental practice in this case has placed fiction on fiction, presumption on presumption, so that when a final judgment is uttered it has no relation to the actual facts.

FOURTH POINT.

OTHER ISSUES PRESENTED BY THE RECORD INVOLVE CONSIDERATIONS IN ADDITION TO THOSE HERETOFORE DISCUSSED.

The special class of cases here referred to are those involved in the 5th and 12th causes of action, in which the aliens were going in transit to Canada; the 2nd, 3rd and 13th causes of action, in which the aliens were excluded on the ground that they were suffering from disabilities which might affect their ability to earn a living; the 14th cause of action, in which the alien was a seaman coming to the United States to join the crew of another vessel; the 15th cause of action, in which the alien was brought to the United States by the express permission of the Labor Department.

TRANSIT ALIENS.

The Court allowed the recovery of one of these fines because the alien eventually was admitted for transit to Canada. Recovery of the other fine also should have been allowed because the Act contemplates the imposition of fines only in case of aliens coming for admission to the United States. Such cases fall within the principles of *Taylor* v. *United States,* (1907) 207 U. S., 120 and *Dollar Steamship Line* v. *Elting,* 51 F. (2d) 1035.

Seaman's Case.

The alien involved in the 14th cause of action was not coming to the United States as an immigrant. He had been employed in Italy to go to the United States to join the steamship *Transylvania,* which was in the port of New York ready to sail. This case also falls within the principle of *Taylor* v. *United States* (1907), 207 U. S. 120, and *Dollar Steamship Line* v. *Elting,* 51 F. (2d) 1035.

Aliens Suffering from Physical Defects.

One of these fines was imposed on the ground that the alien was suffering from an abnormal systemic condition, discoverable only by the use of the Wasserman test (2nd cause of action). This was a condition which could not properly be said to have been discoverable before embarkation, as was subsequently ruled by the Surgeon General's office (R. 290-291).

In another case the alien was certified as being afflicted with valvular disease of the heart. Whether such an ailment would affect the ability of the alien to make a living was not a question solely for medical consideration. The determination of that question depends upon many circumstances, including the nature of the defect, means of livelihood employed by the alien and the judgment of the official whose duty it is to determine the question. It could not be determined until the alien was brought to the United States what the Immigration Officials in the United States might decide as to the alien's admissibility. The case therefore falls within the ruling of *Compagnie Francaise* v. *Elting,* 19 F. (2d) 773.

The fine involved in the 13th cause of action was imposed on the ground that the alien was blind, a disability which might affect his ability to earn a living. That he was blind was evident, but he claimed to be coming to the United States as a student. He held a visa issued by the American Consul under section 4 (e) of the Act of 1924, which exempts from the quota students going to accredited schools. That question could only be properly determined either by the American Consul pursuant to Consular Instructions 140, 141, 142 (R. 292, 293) or by Immigration Officials at the port of arrival. The case therefore properly falls within the principles of *Compagnie Francaise* v. *Elting,* 19 F. (2d) 773, and *Spanish Royal Mail Line Agency, Inc.,* v. *United States,* 45 F. (2d) 404.

The fine involved in the 15th cause of action was imposed on the ground that the alien was an imbecile. The father of the alien, an American citizen, had made special application to the Labor Department for permission to bring his son to the United States, and in that application disclosed his condition. The Labor Department specially authorized the American Consul in Italy to grant a visa to this alien, and he was accepted for transportation on the faith of the visa granted pursuant to such special authorization. These documents were evidence either that the Department had already decided that this alien was admissible or had reserved the question for final determination at the port of arrival. By this an estoppel had been created against the imposition of the fine. *Spanish Royal Mail Line Agency, Inc.* v. *United States,* 45 F. (2d) 404; *Compagnie Francaise* v. *Elting,* 19 F. (2d) 773.

LAST POINT.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED.

April 27, 1932.

Respectfully submitted,

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No. 48

In the Supreme Court of the United States

OCTOBER TERM, 1931

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI,
PETITIONER

v.

PHILIP ELTING, COLLECTOR OF CUSTOMS OF THE PORT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 902

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI, petitioner

v.

PHILIP ELTING, COLLECTOR OF CUSTOMS OF THE Port of New York

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the District Court (R. 535) is reported in 45 F. (2d) 405. The opinion of the Circuit Court of Appeals (R. 633) is reported in 55 F. (2d) 1048.

JURISDICTION

The judgment sought to be reviewed was entered February 8, 1932. (R. 639.) The petition for certiorari was filed April 29, 1932. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

118660—32

QUESTIONS PRESENTED

1. Whether the Secretary of Labor's decision not to refund certain fines imposed under Section 9 of the Immigration Act of 1917, the Quota Act of 1921, as amended in 1922, and the Immigration Act of 1924 for bringing into the United States aliens inadmissible under immigration laws is subject to judicial review.

2. Whether, if reviewable, such a decision should have been reversed by the District Court, there being evidence to support it.

STATEMENT

This suit was brought upon fifteen causes of action. Each was to recover a fine collected from the petitioner for bringing to the United States during the years 1923 to 1926 an alien concededly inadmissible under the immigration laws. A refund of each fine was sought from the Secretary of Labor and denied by him.

The facts vary as to each of the thirteen causes of action presented in the petition. Those regarding the tenth cause of action are fully stated at pages 3–8 in the petition for certiorari.

DISCUSSION

The respondent does not oppose the granting of the writ of certiorari sought by the petitioner in this case.

While we believe the decision below to be correct, the questions involved are so similar to those

presented by the Government's petition in *Philip Elting, Collector of Customs, Port of New York* v. *North German Lloyd*, now pending on petition for certiorari, No. 885, that their general importance makes a review of this case by the Court desirable to the Government as well as to the petitioner.

Respectfully submitted.

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MAY, 1932.

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CHARLES ELMORE CROPLEY
CLERK

No. 48

In the Supreme Court of the United States

OCTOBER TERM, 1932

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI,
PETITIONER

v.

PHILIP ELTING, COLLECTOR OF CUSTOMS OF THE PORT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 48

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI,
petitioner

v.

PHILIP ELTING, COLLECTOR OF CUSTOMS OF THE
Port of New York

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 350–362) is reported in 45 F. (2d) 405. See also 46 F. (2d) 315. The opinion of the Circuit Court of Appeals (R. 409–415) is reported in 55 F. (2d) 1048.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 8, 1932. (R. 415.) The petition for certiorari was filed April 29 and was

granted May 23, 1932, 286 U. S. 539. (R. 416–417.) The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The principal questions presented are:

1. Whether Section 9 of the Immigration Act of 1917, as amended by Section 26 of the Immigration Act of 1924, as construed and applied by the Secretary of Labor, is constitutional.

2. Whether fines imposed upon the petitioner by the Secretary of Labor under Section 9, both prior to and after its amendment by the Immigration Act of 1924, for bringing to the United States aliens who were found upon arrival to be afflicted with diseases or disabilities specified in that section, and who were excluded by reason thereof, may be recovered from the Collector of Customs when the Secretary of Labor has found that the existence of such diseases or disabilities might have been detected by means of a competent medical examination at the time of foreign embarkation.

3. Whether the findings of the Secretary were arbitrary or capricious.

Other questions presented are discussed in Point IV of the argument (pp. 31–38, *infra*).

STATUTES AND REGULATIONS INVOLVED

These are set forth in the Appendix (pp. 43–49, *infra*).

STATEMENT

This is a suit by the petitioner upon fifteen causes of action to recover from the Collector of Customs certain fines imposed upon it by the Secretary of Labor under Section 9 of the Immigration Act of 1917 and under that section as amended by Section 26 of the Immigration Act of 1924. (R. 1–21.) By stipulation the case was tried before a jury of one. (R. 27.) After a hearing the trial judge directed a verdict in favor of the respondent on all the causes of action except the ninth, eleventh, and fifteenth, as to which he directed verdicts for the petitioner in the total sum of $2,412.63, plus interest. Judgment was entered accordingly. (R. 26, 203.) Upon appeal by both parties the Circuit Court of Appeals affirmed the judgment of the District Court except as to the fifteenth cause of action, as to which the judgment was reversed. (R. 415.)

The essential facts, which seem to be undisputed, are as follows:

Between the years 1923 and 1927 the petitioner, an Italian corporation, brought to the United States in its vessels fifteen aliens, all of whom were found upon arrival to be inadmissible because of being affected with either (1) a loathsome or dangerous contagious disease, or other disease or disability specified in Section 9 of the Immigration Act of 1917; or (2) a physical defect of a nature which

might affect the alien's ability to earn a living.[1] In each case the examining physicians at Ellis Island certified that in their opinion the existence of the disease, disability, or defect involved might have been detected by a competent medical examination at the port of foreign embarkation. (R. 215, 232, 240, 247, 254, 263, 269, 272, 288, 303, 317, 340, 352, 372, 384, 393.) In each instance the petitioner was notified by the Secretary of Labor of the findings of the medical examiners, advised that such findings indicated its liability to a fine under Section 9 of the Immigration Act of 1917, or under that section as amended by Section 26 of the Immigration Act of 1924, and was given 60 or 30 days in which to have a hearing. (R. 352.)

In each case the petitioner filed with the Commissioner General of Immigration an unverified letter of protest against the imposition of the fine, stating generally that it was the regular practice of the petitioner to have each immigrant carefully examined by competent doctors prior to embarkation, and that the disease or disability by reason of which the fine was proposed either did not exist at the time of embarkation or could not then have been discovered by means of a competent medical examination; or that the alleged physical defect

[1] All the aliens were excluded and deported except the two, Rullo and De Sanctis, who were involved in the ninth and eleventh causes of action, respectively, who were eventually admitted after hospitalization and cure at Ellis Island. See p. 7, *infra*.

did not exist prior to embarkation, or was of such a nature as, in the opinion of petitioner's doctors, could not affect the alien's ability to earn a living. In some cases the letters of protest stated that the American consul had granted the alien a quota-immigration visa, a nonquota visa, or an "in transit" certificate, as the case might be. (R. 221, 224, 236, 249, 253, 258, 267, 276, 281, 294, 311, 338, 368, 378, 399.) In two cases[2] the letters of protest were accompanied by brief affidavits, and in another case by copies of correspondence, which tended to confirm some of the statements in the letters. (R. 283–286, 313–316, 381–382.) In all cases fines were imposed, the Secretary of Labor ruling formally in each case that the matter submitted by the petitioner in and with its letters of protest did not overcome the force of the certificate of the medical examiners at Ellis Island. (R. 214, 222, 235, 245, 251, 257, 264, 271, 277, 293, 306, 334, 367, 376, 390.) The fines were paid under protest. (R. 350.)

The "files" or "records" upon which the Secretary of Labor based his decisions (R. 69) as to the petitioner's liability for the fines consisted, in general, of the transcript of the hearing and examination before the Special Board of Inquiry at Ellis Island, wherein the admissibility of the alien was passed upon, the petitioner's letters of protest, ac-

[2] One of these was the Fusco case, involving the 10th cause of action, the facts as to which are set forth at length in the petitioner's brief as an "illustrative" case.

companied in three instances by affidavits or copies of correspondence, and various communications of an intradepartmental character relating to the disposition of the alien by the Secretary (R. 213–341, 367–403).

At the trial the petitioner introduced extensive evidence, none of which had been presented to the Secretary of Labor, tending to show that all immigrant passengers upon the petitioner's vessels were put through two or more careful medical examinations in Italy prior to embarkation, and that the persons who conducted these examinations were skilled and competent doctors. (R. 27–130.) This testimony was admitted, subject to motion to strike out, over the objection of the respondent that in determining whether the fines were properly imposed the court could consider only the evidence which was presented to the Secretary of Labor. (R. 30, 68, 69, 142, 201.) The respondent, reserving his objection to the admission of evidence not before the Secretary, introduced evidence to rebut the assertions of the petitioner based upon evidence not presented to the Secretary. (R. 131–198.) Subsequently the respondent's motion to strike out all testimony relating to the medical examination of aliens abroad by the petitioner and other testimony not presented to the Secretary was granted, and an exception noted. (R. 202.)

The second, third, fifth, twelfth, thirteenth, fourteenth, and fifteenth causes of action involve special considerations, but for brevity the special facts

with respect to these causes of action are set forth only in the argument. (See Point IV, *infra.*)

The ninth and eleventh causes of action involved, respectively, the aliens Rullo and De Sanctis, who were excluded temporarily because of being afflicted with certain diseases, but who were thereafter admitted, under Section 22 of the Immigration Act of 1917 (U. S. C., Title 8, Sec. 159), after having been treated in the Ellis Island Hospital and cured. (R. 11, 14, 356, 367–368, 375–377.) Judgment was entered by the District Court for the petitioner in these causes (R. 26), which judgment was affirmed by the Circuit Court of Appeals (R. 415). There is no issue pending in this Court with respect to these two causes of action.

SUMMARY OF ARGUMENT

I

The penalty provisions of Section 9 of the Immigration Act of 1917, as amended by Section 26 of the Immigration Act of 1924, are constitutional.

Under Section 9 it is unlawful for a steamship company to bring to the United States any alien afflicted with (1) a loathsome or dangerous contagious disease, or other disability therein specified, or (2) a defect which may affect his ability to earn a living. Section 9 provides further for the payment to the Collector of Customs of penalties in the respective amounts of $1,000 and $250 if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was

afflicted with (1) such disease, disability or (2) defect at the time of foreign embarkation and that the existence of such disease, disability, or defect might have been detected by means of a competent medical examination at that time. The Collector is required to refuse to grant clearance papers to any vessel until any fines imposed have been paid or secured by deposit.

These provisions are substantially identical with Section 9 of the Immigration Act of 1903, which was construed and upheld as constitutional in *Oceanic Navigation Co.* v. *Stranahan,* 214 U. S. 320. It is true that the fines imposed by Section 9 of the 1917 Act, as amended, are greater in amount than those imposed by the 1903 Act,but this fact does not make the ruling in the *Stranahan* case inapplicable. Obviously the matter of the amount of the fine is a legislative rather than a judicial one. It is not asserted that the fines are so high as to be confiscatory, and it does not appear that they are out of proportion to the offenses prohibited. The constitutionality of provisions substantially identical to those here involved and imposing fines in substantially the same amounts has been accepted by the courts, apparently without question.

II

The finding of the Secretary that the disease, disability, or defect in question might have been detected by means of a competent medical examination at the port of foreign embarkation is

final, unless shown to be arbitrary or capricious, and accordingly the petitioner was not entitled to a judicial hearing *de novo* on this issue.

The administration of the immigration laws has been committed to the Secretary of Labor. Under Section 9 the test of liability is the appearance of certain facts "to the satisfaction of the Secretary of Labor." This language negatives the contention that after the Secretary is satisfied as to the existence of the requisite facts the courts may try the question *de novo.*

The determination of the question whether the diseases or disabilities might have been detected by means of a competent medical examination does not involve the determination of any fact of a jurisdictional character nor of a fact upon which the enforcement of constitutional rights of a citizen depend, which would entitle the petitioner to a judicial hearing *de novo* within the rulings of *Ng Fung Ho* v. *White,* 259 U. S. 276, *Crowell* v. *Benson,* 285 U. S. 22, and other like cases cited by the petitioner.

III

The findings of the Secretary were not arbitrary or capricious. The examining physicians at Ellis Island certified as to each alien that the existence of the excluding disease or defect might have been detected by means of a competent medical examination at the time of foreign embarkation. In each

case the petitioner was notified of the proposed fine and granted a hearing, and in each instance it filed letters of protest, stating its reasons why the fine should not be imposed. In each case the Secretary of Labor concluded, after a consideration of the petitioner's protest, that the matter submitted by the petitioner did not overcome the force of the certificate of the medical examiners at Ellis Island. The Secretary's finding was thus made upon substantial evidence and only after due notice to the petitioner and opportunity for a hearing.

The Secretary was justified in basing his findings upon the certificates of the doctors at Ellis Island. Such certificates, though unaccompanied by the data on which they were based, were evidence of the facts therein stated for purposes of an administrative hearing.

IV

Petitioner's contention that a fine may not be imposed for bringing to the United States an alien with a defect which might affect his ability to earn a living when the alien's admissibility can be finally determined only by the immigration officials in the United States is without merit. There is nothing in the statute which creates an exemption from liability in cases where the nature of the defect is such that its detectability is difficult, or where the question of its effect upon the ability of the alien to earn a living is subject to a difference of opinion.

The known purpose of Section 9 was to exclude diseased and defective aliens. The dangers inci-

dent to the admission of a diseased or defective alien exist even though the alien's stay in this country is only temporary. Aliens whose ultimate destination is not the United States but who intend merely to pass through the United States in transit are therefore within the letter and the spirit of the law.

Aliens to whom American consular visas have been issued prior to the time of embarkation are also within the statute, which expressly provides that, even though an alien has been issued an immigration visa, he shall not be entitled to enter the United States if, upon arrival, he is found to be inadmissible under the immigration laws.

ARGUMENT

I

SECTION 9 OF THE IMMIGRATION ACT OF 1917, AS AMENDED BY SECTION 26 OF THE IMMIGRATION ACT OF 1924, IS CONSTITUTIONAL

Under the first sentence of Section 9 of the Immigration Act of 1917, as amended by Section 26 of the Immigration Act of 1924 (pp. 43–46, *infra*), it is unlawful for any person to bring to the United States any alien afflicted with a loathsome or dangerous contagious disease or other disease or disability therein enumerated. That sentence provides further that—

> if it shall appear *to the satisfaction of the Secretary of Labor* that any alien so brought to the United States was afflicted with any

> of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person * * * shall pay to the collector of customs * * * the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation * * *. (Italics ours.)

By the second sentence of Section 9 it is made unlawful for any person to bring to any port in the United States an alien afflicted with a "physical defect of a nature which may affect his ability to earn a living," and a fine of $250, plus passage money, is imposed—

> if it shall appear *to the satisfaction of the Secretary of Labor* that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time * * *. (Italics ours.)

Administrative enforcement and collection of the fines thus imposed are insured by the further provision that—

> no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fines, or while the fines remain unpaid, nor shall such fines be remitted or refunded: Pro-

vided, That clearance may be granted prior to the determination of such questions upon the deposit of a sum sufficient to cover such fines * * *.

All the fines which are involved in this case were imposed under Section 9, as above quoted, or under that section as it existed prior to its amendment in 1924.[3] The petitioner contends that Section 9, as amended, violates the due process clause of the Federal Constitution for the reason that the amounts of the fines imposed thereby are excessive in view of the fact that they are imposed and enforced by administrative officials without judicial action of any sort.

This Court has held that Congress, when legislating as to matters exclusively within its control, may lawfully impose appropriate obligations, sanction their enforcement by reasonable money penalties, and give to administrative officials the power to enforce such penalties without the necessity of judicial action. *Hampton & Co.* v. *United States,* 276 U. S. 394, 406; *Oceanic Navigation Co.* v. *Stranahan,* 214 U. S. 320; *Passavant* v. *United*

[3] The only change made in Section 9 by the 1924 amendment was an increase in the amount of the fines imposed, the two fines above described being increased from $200 and $25, respectively, to $1,000 and $250. No attack is made upon the constitutionality of Section 9 as it existed prior to the 1924 amendment. The first nine causes of action herein involve fines which were imposed under Section 9 prior to the amendment. (R. 3–17.)

States, 148 U. S. 214. See also *Navigazione Libera Triestina* v. *United States,* 36 F. (2d) 631 (C. C. A. 9th); *Zakonaite* v. *Wolf,* 226 U. S. 272, 275.

In the *Stranahan* case, *supra,* the Court construed and upheld as constitutional a provision of the Immigration Act of 1903 substantially identical with the one here involved.[4] This Court there held that it was competent for Congress to place upon steamship companies the duty of subjecting immigrants to a competent medical examination prior to embarkation and refusing passage to those failing to meet the necessary requirements, to impose a reasonable money penalty for failure to meet this duty, and to delegate to an administrative official the exclusive power to determine whether this duty had been adequately performed and to enforce the execution of the penalty without recourse to judicial action. In its opinion the Court said (pp. 339–340):

> * * * over no conceivable subject is the legislative power of Congress more complete than it is over that with which the act we are now considering deals. * * * As the authority of Congress over the right to bring aliens into the United States embraces every conceivable aspect of that subject, it must follow that if Congress has deemed it necessary to impose particular restrictions on the coming in of aliens, and to sanction such pro-

[4] Section 9 of the Act of March 3, 1903, c. 1012, 32 Stat 1213.

> hibitions by penalities enforcible by administrative authority, it follows that the constitutional right of Congress to enact such legislation is the sole measure by which its validity is to be determined by the courts. * * *

The petitioner apparently concedes the foregoing, but contends that the fines imposed under Section 9 of the 1917 Act, as amended, are so much higher than those involved in the *Stranahan* case that they are unreasonable and excessive, and that therefore the *Stranahan* case is not applicable to the instant case. But, clearly, the matter of the amount of the fine is a legislative rather than a judicial one. It is not asserted and there is nothing to indicate that the fines are so high in amount as to be confiscatory, or as to interfere seriously with the operations of the petitioner and other steamship companies, or that the fines are out of all proportion to the offenses prohibited.

The petitioner seems to contend that the statute is unconstitutional because it affords no judicial review of the Secretary's action. But the court below did not hold, and the Government does not contend (see Point II, *infra*), that the Secretary's action in imposing a fine can not be reviewed judicially, if it is based upon an erroneous application of the statute, or if there is no evidence to support it, or if it is clearly arbitrary or capricious. Judicial review within these limits clearly meets all

constitutional requirements. *Phillips* v. *Commissioner,* 283 U. S. 589, 599–600.

The petitioner cites *Lipke* v. *Lederer,* 259 U. S. 557, and *Regal Drug Co.* v. *Wardell,* 260 U. S. 386, as holding that a money penalty in the amount of those here involved may not constitutionally be enforced by administrative action. But those cases merely held that an exaction which was in essence a *penalty for a crime* could not be enforced *as a tax* through the summary action of executive officers. *United States* v. *Regan,* 232 U. S. 37, and other cases cited by the petitioner, like the petitioner's arguments with respect to the powers of the Interstate Commerce Commission, the Federal Trade Commission, and other bodies, would seem to have no application to the instant case.

Since the *Stranahan* case, the constitutionality of provisions substantially identical with those here involved and imposing fines in substantially the same amounts has been accepted by the courts, apparently without question. *The Nanking,* 290 Fed. 769, 771 (C. C. A. 9th); *Navigazione Libera Triestina* v. *United States,* 36 F. (2d) 631 (C. C. A. 9th); *North German Lloyd* v. *Elting,* 48 F. (2d) 547 (C. C. A. 2d); *New York & Porto Rico S. S. Co.* v. *United States,* 52 F. (2d) 980 (S. D. N. Y.); *Lamport & Holt* v. *Elting,* 51 F. (2d) 1057 (S. D. N. Y.). See also *United States* v. *New York S. S. Co.,* 269 U. S. 304, and *United States* v. *Nord Deutscher Lloyd,* 223 U. S. 512.

II

THE FINDING OF THE SECRETARY THAT THE DISEASE, DISABILITY, OR DEFECT MIGHT HAVE BEEN DISCOVERED BY MEANS OF A COMPETENT MEDICAL EXAMINATION IS FINAL, UNLESS SHOWN TO BE ARBITRARY OR CAPRICIOUS[6]

The fact that the petitioner brought to this country aliens who were afflicted with diseases or other defects specified in the statute is conceded. The only disputed issue is whether the diseases or defects might have been detected by means of a competent medical examination abroad. In each case the Secretary so found. But the petitioner contends that the Secretary's findings were erroneous and that it is entitled to a trial *de novo* on this issue. The respondent contends that the decision of the Secretary is final and that judicial review is limited to a determination of whether the Secretary has abused his discretion. It is not enough for the petitioner or for a court to say that the excluding defects could not have been discovered by a competent examination, for the United States, by the only voice authorized to express its will, has said this is not so. Cf. *Polymeris* v. *Trudell,* 248 U. S. 279, 281.

This Court has frequently pointed out that the administration of the immigration laws has been

[6] For a closely related argument involving another penalty provision of the immigration laws, see Point II in the brief for the petitioner in *Elting* v. *North German Lloyd*, No. 42, present term, which case is to be argued immediately prior to the argument in the instant case.

committed to the Secretary of Labor, and has held that in such administration his findings of fact, within the scope of his authority, are final unless arbitrary or capricious, and his discretion will not be interfered with unless an abuse of discretion is shown. *Polymeris* v. *Trudell, supra*; *Quon Quon Poy* v. *Johnson,* 273 U. S. 352, 358; *Ng Fung Ho* v. *White,* 259 U. S. 276, 284; *Kwock Jan Fat* v. *White,* 253 U. S. 454, 457; *Zakonaite* v. *Wolf,* 226 U. S. 272, 275; *United States* v. *Ju Toy,* 198 U. S. 253. Numerous like rulings have been made by this Court with reference to statutory provisions, other than immigration laws, which have invested administrative officials with discretionary power. *Phillips* v. *Commissioner,* 283 U. S. 589; *United States* v. *Williams,* 278 U. S. 255; *Williamsport Wire Rope Co.* v. *United States,* 277 U. S. 551; *Duquesne Steel Foundry Co.* v. *Burnet,* 283 U. S. 799; *Ma-King* v. *Blair,* 271 U. S. 479, 483; *Johnson* v. *Drew,* 171 U. S. 93; *Public Clearing House* v. *Coyne,* 194 U. S. 497; *Passavant* v. *United States,* 148 U. S. 214.

In Section 9 of the Immigration Act of 1917 Congress has indicated in the plainest of language its intention that the facts upon which liability is predicated shall be determined *exclusively* by the Secretary of Labor. The test of liability is the appearance of certain facts "to the satisfaction of the Secretary." This language is incompatible with the suggestion that after the Secretary has been satisfied as to the existence of the requisite

facts any person aggrieved may have the same issue tried anew in the courts.* See *United States* v. *Morris,* 10 Wheat. 246, 284–285.

The contention of the petitioner that it is entitled to a trial *de novo* has been answered by this Court in the *Stranahan* case. The language of Section 9 of the 1903 Act, there involved, is substantially identical with that of Section 9 of the 1917 Act. With respect to the prior Act the Court said (p. 333):

> We think it is also certain that the power thus lodged in the Secretary of Commerce and Labor *was intended to be exclusive,* * * * and that the power to refuse clearance to vessels was lodged for the express purpose of causing both the imposition of the exaction and its collection to be acts of administrative competency, *not requiring a resort to judicial power for their enforcement.* * * * (Italics ours.)

The entire decision in that case was predicated upon the assumption that the statute gave to the Secretary the power to impose and enforce the

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* In the report of the Senate Committee on Immigration with respect to the provision of the Immigration Act of 1903 which was the predecessor of Section 9 of the 1917 Act, the Committee said (Senate Report No. 2119, 57th Cong., 1st Sess., p. vi):

"Section 10 of the measure under consideration imposes a penalty of $100 to be imposed by the Secretary of the Treasury for each case brought to an American port, provided that *in his judgment* the disease might have been detected by means of medical examination at the port of embarkation." (Italics ours.)

fines "without resort to the courts." The very purpose of Section 9 in vesting authority in the Secretary to impose and enforce the fines was, as pointed out in the *Stranahan* decision (p. 337)—

> by the avoidance of controversy and delay, to secure the efficient performance by the steamship company of the duty to examine in the foreign country, before embarkation, * * *.

This purpose would be completely defeated if in every case the courts possessed the power to determine whether the Secretary's decision was correct. Congress plainly desired to leave the administration of the law "to the attention of officers made alert to attempts at evasion of it and instructed by experience of the fabrications which will be made to accomplish evasion." See *Tulsidas* v. *Insular Collector*, 262 U. S. 258, 265.

The various provisions of the immigration laws imposing penalties upon steamship companies for bringing diseased, defectiye, or otherwise inadmissible aliens to the United States[7] have frequently been before the Federal courts, particularly those of the Second Circuit. In construing these provisions the courts have been careful to point out that unless manifestly wrong or wholly arbitrary or capricious the decision of the Secretary is final.

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[7] In addition to the penalty provisions here involved and other provisions of Section 9 of the Immigration Act of 1917, as amended, see Section 16 of the Immigration Act of 1924 (U. S. C., Title 8, Sec. 216).

North German Lloyd v. *Elting,* 48 F. (2d) 547 (C. C. A. 2d); *United States* v. *Compagnie Generale Transatlantique,* 26 F. (2d) 195 (C. C. A. 2d); *New York & Porto Rico S. S. Co.* v. *United States,* 52 F. (2d) 980 (S. D. N. Y.); *Lamport & Holt* v. *Elting,* 51 F. (2d) 1057 (S. D. N. Y.). Like conclusions have been reached with respect to provisions imposing penalties upon steamship companies for failure to detain on board or to deport alien seamen after notice from the Secretary of Labor.[8] *Navigazione Libera Triestina* v. *United States,* 36 F. (2d) 631 (C. C. A. 9th); *Denholm Shipping Co.* v. *Elting,* 55 F. (2d) 422 (S. D. N. Y.); *Lloyd Royal Belge Societe Anonyme* v. *Elting,* 55 F. (2d) 340 (S. D. N. Y.); cf. *The Presidente Wilson,* 56 F. (2d) 742 (C. C. A. 2d).

It is true that in some cases the courts have allowed the recovery of fines imposed by the Secretary, but these decisions were either based upon the holding, express or implied, that the findings of the Secretary were arbitrary (*Svenska Amerika Linien* v. *Elting,* 46 F. (2d) 178 (S. D. N. Y.); *Spanish Royal Mail Line Agency, Inc.* v. *United States,* 45 F. (2d) 404 (S. D. N. Y.); *Clyde S. S. Co.* v. *United States,* 33 F. (2d) 343 (S. D. N. Y.)) or that there was an absence of facts upon which the power of the Secretary to act depended (*North German*

[8] See Section 10 of the Immigration Act of 1917, as amended by Section 27 of the Immigration Act of 1924 (U. S. C., Title 8, Sec. 146), and Section 20 (a) of the Immigration Act of 1924 (U. S. C., Title 8, Sec. 167).

Lloyd v. *Elting*, 54 F. (2d) 997 (C. C. A. 2d), No. 42, present term, *supra; Compagnie Generale Transatlantique* v. *United States*, 51 F. (2d) 1053 (C. C. A. 2d); *Dollar Steamship Line* v. *Elting*, 51 F. (2d) 1035 (C. C. A. 2d); *Sinclair Navigation Co.* v. *United States*, 32 F. (2d) 90 (C. C. A. 5th); *Dollar Steamship Line* v. *Hyde*, 23 F. (2d) 910 (C. C. A. 9th); *Compagnie Francaise de Navigation a Vapeur* v. *Elting*, 19 F. (2d) 773 (C. C. A. 2d); *Pan-American Petroleum & Transport Co.* v. *United States*, 28 F. (2d) 386 (E. D. La.); *W. & C. T. Jones S. S. Corp.* v. *Hamilton*, 255 Fed. 799 (E. D. Va.); *Cunard S. S. Co.* v. *Stranahan*, 134 Fed. 318 (C. C., S. D. N. Y.)). While the Government does not accept the conclusions in all the foregoing cases as sound, it is significant that in none of these cases was it held that the courts could consider *de novo* the evidence before the Secretary and reverse his decision if they took a different view of the evidence.*

But apparently the petitioner's theory as to the construction of Section 9 is not based so much on the language of the statute as upon the conten-

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*There are one or two District Court decisions, in which the basis of the decision does not clearly appear, which seem to proceed upon the assumption that the court may determine for itself whether, on the facts, the fine should be imposed. *New York & Porto Rico S. S. Co.* v. *United States*, 58 F. (2d) 827 (S. D. N. Y.); *Bermuda & West Indies S. S. Co.* v. *Elting*, 45 F. (2d) 411 (S. D. N. Y.). If that is what these decisions hold, they can not be supported.

tion that in reviewing administrative decisions a court must try *de novo* any question of fact upon which the authority of the administrative officer depends. In support of its contention the plaintiff cites *In re Fassett,* 142 U. S. 479; *Ng Fung Ho* v. *White,* 259 U. S. 276; *Federal Trade Commission* v. *Raladam Co.,* 283 U. S. 643; *Crowell* v. *Benson,* 285 U. S. 22, and other like cases. But these decisions are not applicable to the instant case. No facts of a jurisdictional character were in controversy before the Secretary. It is conceded that the petitioner brought the aliens to the United States and that upon arrival they were afflicted with diseases or defects which rendered them inadmissible. The only disputed issue is whether the diseases or defects might have been detected by competent medical examinations prior to embarkation. In other words, the facts upon which the authority of the Secretary to act depends are conceded, and the question is not whether the Secretary had the power to decide the issue, but whether he correctly decided it. There is no question here as to the *jurisdiction* of the Secretary, as was true in the *Ng Fung Ho* case, nor is there involved the final determination of facts "upon which the enforcement of the constitutional rights of the citizen depend," as was the situation in *Crowell* v. *Benson, supra.* Accordingly these decisions and the other like cases cited by the petitioner are inapposite. See *In re Neuwirth,* 123 Fed. 347 (C. C., S. D. N. Y.).

The petitioner complains that the Circuit Court of Appeals "appeared to be of the opinion that a transportation company is not entitled to a hearing of any kind," and that both courts below misconstrued the *Stranahan* case as making the medical certificate of the Ellis Island doctors conclusive of the condition of the alien, not only upon arrival but also at the time of embarkation. There is no proper basis for these assertions. The Circuit Court of Appeals, after pointing out that determination of the fact of foreign detectability of an excluding condition has been left to what would satisfy the Secretary, stated that it was not error "to treat the certificates of the medical examiners as evidence of the facts as therein stated." That the court below did not overstate the decision in the *Stranahan* case is apparent from pages 342–343 of the opinion in that case, wherein the Court pointed out that it is a distinction without a difference to argue that Congress has power to attach conclusive effect to the result of the medical examination for the purpose of exclusion, but has not the power "to make the medical examination conclusive for the purpose of imposing a penalty upon the vessel for the negligent bringing in of an alien." Indeed, the Court was apparently of the opinion that the Secretary's decision, in reliance upon the medical certificate, was so absolute that the carrier might be deprived of a hearing.

If the petitioner was not entitled to a trial *de novo* in the District Court, then that court was clearly right in refusing to consider and striking the evidence on this question which the petitioner introduced in that court but which it did not present to the Secretary of Labor. If the only question for judicial review is whether the Secretary's determination was arbitrary, the evidence which was stricken by the trial court is not material, since the Secretary can not be said to have acted arbitrarily with respect to evidence which was never presented to him. See *Denholm Shipping Co.* v. *Elting,* 55 F. (2d) 422 (S. D. N. Y.).

III

THE FINDINGS OF THE SECRETARY WERE NOT ARBITRARY OR CAPRICIOUS

To sustain its contention that the Secretary's findings were arbitrary the petitioner must establish either that a fair hearing was denied or that his decisions were not based upon any substantial evidence. It is not enough to show a state of proof upon which the court might reach a different conclusion. *Ng Fung Ho* v. *White,* 259 U. S. 276, 284.

The facts as to the imposition of the fines are as follows (pp. 3–6, *supra*): The examining physicians at Ellis Island certified as to each alien that the existence of the excluding disease, disability, or defect might have been detected by means of a competent medical examination at the time of

embarkation. In each case the petitioner was notified of the findings of the medical examiners, advised that such findings indicated its liability to a fine, and given 60 or 30 days in which to have a hearing.[19] In each case the petitioner filed an unverified letter of protest, stating generally that it was the regular practice of the petitioner to have each immigrant carefully examined by competent doctors prior to embarkation, and that the disease, disability, or defect in question either did not exist at the time of embarkation or could not then have been discovered by means of a competent medical examination. In some cases the letters stated that the American consul had granted to the alien a quota-immigration visa, a nonquota visa, or an "in transit" certificate, as the case might be. The letters of protest were accompanied in two cases by affidavits, and in another case by correspondence, tending to confirm the statements made in the letters. In each case the Secretary of Labor concluded, after a consideration of the transcript of the hearing before the Special Board of Inquiry at Ellis Island, wherein the admissibility of the alien was passed upon, and of the petitioner's protests, that the matter submitted by the petitioner

[19] For a period of a year and a half the Immigration Rules specified a notice of only 30 days. Rules of February 1, 1924, Rule 22 (B) (1). Prior to and since these particular rules the period was and has been 60 days. See Rules of May 1, 1917 (August, 1922, Edition), Rule 28; Rules of July 1, 1925, Rule 22 (B) (1).

did not overcome the force of the certificate of the medical examiners.[11]

It thus appears that the Secretary's finding was made only after due notice to the petitioner and an opportunity to be heard. It further appears plainly that his finding was made upon substantial evidence, since in each case he had before him the certificate of the official medical examiners at the port of arrival.

The petitioner contends that the Secretary's action was arbitrary because, it is said, he treated the medical certificates of the Ellis Island physicians as conclusive regardless of whatever evidence there was the other way. This obviously is incorrect. The notices of the proposed fines were sent out only after the medical certificates were issued, and in each case the plaintiff was afforded ample opportunity to satisfy the Secretary that the certificates were erroneous. Except in one or two cases the petitioner's "protests" consisted merely of unverified statements of conclusions of facts. In none of the cases was the petitioner's proof so convincing as to justify the assertion that the Secretary acted arbitrarily in disregarding it.

The petitioner does not suggest that the examiners were biased or incompetent, and there is

[11] The departmental procedure with reference to the imposition and collection of fines is set forth in Rule 23 of the Immigration Rules of January 1, 1930, pp. 46–49, *infra*. Substantially the same rules have prevailed since the Immigration Act of 1917.

nothing to indicate that the medical examinations were not made exactly as required by the statute (See Sec. 16 of the Immigration Act of 1917, U. S. C., Title 8, Sec. 152) and the Public Health Service regulations. (See R. 343–349.) While it is true that the statute does not make it mandatory for the Public Health Service surgeons to render opinions concerning the detectability at the time of embarkation of a disease or defect ascertained to exist upon arrival, there is nothing in the immigration laws to prevent the Secretary from considering such opinions, and the Public Health Service regulations expressly contemplate the rendition thereof. (R. 346.) The certificates, even though unaccompanied by the data upon which they were based, were evidence of the facts therein stated for purposes of an administrative hearing. *United States* v. *Tod,* 296 Fed. 127 (C. C. A. 2d). See *Oceanic Navigation Co.* v. *Stranahan,* 214 U. S. 320, 342–343; *Bilokumsky* v. *Tod,* 263 U. S. 149, 157; *White* v. *Chan Wy Sheung,* 270 Fed. 764, 766 (C. C. A. 9th), certiorari denied, 257 U. S. 654; *United States* v. *Day,* 33 F. (2d) 267 (C. C. A. 2d), certiorari denied, 280 U. S. 594; *Mason* v. *Tillinghast,* 27 F. (2d) 580 (C. C. A. 1st).

The petitioner contends that the Secretary "ignored" certain "official" evidence which he should have considered, consisting of (1) the medical certificate, to the effect that the alien was in sound physical condition, attached to the consular visa

issued to the alien,[12] and (2) the passenger manifest, a document required to be executed by the ship's officers and certifying that the aliens on board had been examined and were believed to be admissible.[13] That the Secretary failed to consider these documents does not appear from the record. Obviously, if there was any conflict in the various medical certificates required by the statutes, the Secretary was warranted in relying upon the certificate of the official immigration examiners rather than upon the certificates of doctors employed by the alien or by the steamship company. Moreover, there is nothing which indicates that the statutory provisions relating to visas and manifests were intended to relieve steamship companies of the obligation to make their own examination. See *North German Lloyd* v. *Elting,* 48 F. (2d) 547, 550 (C. C. A. 2d). In fact, the Public Health Service regulations contain an express warning to the contrary. (R. 207.)

Petitioner complains that the Secretary treated its "protests" as "comment on the evidence" and not as "evidence." So far as the protests consisted merely of unverified letters, it seems clear that the Secretary would have been warranted in not treating them as "evidence." But, assuming that the

[12] This certificate is made by a doctor employed by the alien. See R. 207. See also Immigration Rules of January 1, 1930, Rule 3 (G) (2).

[13] See Sections 12 and 13 of the Immigration Act of 1917 (U. S. C., Title 8, Secs. 148, 149).

letters should be treated as evidence of the facts therein stated, all that was thus placed before the Secretary were the conclusions of the Italian doctors, which conflicted with those of the doctors at Ellis Island.[14] With the proof thus conflicting, the Secretary was warranted in accepting the views of the American doctors.

There is nothing in the record which indicates that the petitioner ever requested permission to submit comprehensive affidavits or oral evidence to the Secretary setting forth in detail the methods employed by it in examining the aliens prior to embarkation,[15] or that after notice of a fine it requested a rehearing or reopening of a case for the presentation of new evidence or arguments. The mass of evidence introduced in the District Court, but never presented to the Secretary, demonstrates clearly that the petitioner might well have presented, if only in the form of letters, the evidence to support its claims. The fines in question were imposed over a period from 1923 to 1927, without, apparently, any effort on the part of the petitioner to change its mode of procedure in contesting fines.

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[14] In several of its protests the petitioner did not even assert that the particular alien involved had been given a competent medical examination abroad, the assertion being merely that it was the practice of the petitioner to cause all aliens to be examined carefully prior to embarkation. (R. 253, 258, 268.)

[15] Presumably such a request would have been granted. See Rule 23, Subdivision C, Par. 1, Immigration Rules of January 1, 1930, p. 48, *infra*. See also R. 141.

The contention that the imposition of the fine was a function of the Secretary of Labor which could not be delegated to an Assistant Secretary of Labor is, in our opinion, unfounded. See *Myers* v. *United States*, 272 U. S. 52, 117.

We submit there is no basis for the contention that the decisions of the Secretary were arbitrary.

IV

THE CASES INVOLVING SPECIAL CONSIDERATIONS

The petitioner contends that special considerations apply to certain cases which, wholly apart from its general argument, establish that the fines were illegal.

The second and third causes of action involve the aliens Marrara and Sbragia, who were found upon arrival to have been afflicted with physical defects which might affect their ability to earn a living, and which the examining physicians certified might have been detected by means of a competent medical examination at the port of embarkation. (R. 3–4, 231, 241.) The petitioner contends that no fines should have been imposed, since, in these cases, the question of admissibility is not solely a *medical* question, but one which turns largely on the personal judgment of the immigration officials as to whether, in view of all the circumstances affecting the particular alien, his defect is such that it may affect his ability to earn a living; that the question whether these aliens were

admissible could not be determined until their arrival in the United States; and that the petitioner is not liable to a penalty for bringing such aliens to this country so that they might satisfy the authorities, if possible, that they had the right to enter.

In plain language, Section 9 makes it unlawful "to bring to any port of the United States any alien" afflicted with a defect "of a nature which may affect his ability to earn a living," and makes the fine payable if "it shall appear to the satisfaction of the Secretary of Labor" that the alien was so afflicted at the time of foreign embarkation and that the existence of such defect "might have been detected by means of a competent medical examination at such time." There is nothing in the statute which creates an exemption from liability where the carrier is in doubt as to the alien's admissibility, or where the nature of the defect is such that its detectability or the determination of its effect upon the alien's earning ability is more than ordinarily difficult, or where the question of admissibility can only be answered with certainty by officials at the port of entry.[16]

[16] The difficulty of detecting certain disabilities and the chance of conflict of medical opinion in certain cases was stressed by representatives of the steamship companies at the committee hearings upon the bill which became the Immigration Act of 1903—the first immigration law which imposed a fine for bringing diseased aliens to the United States. In reply, the members of the committee pointed out that the imposition of the fine was vested in the discretion of the Sec-

Generally speaking, the question of admissibility in *all cases* can only be determined *with finality* upon arrival of the alien in the United States. (See Section 2 (g) of the Immigration Act of 1924, U. S. C., Title 8, Sec. 202 (g).) The penalty provisions of the second sentence of Section 9 would be of little effect if by exhibiting a medical certificate of its doctors to the effect that they could not be certain whether the defect in question would be held to be one which might affect the alien's ability to make a living the steamship companies are to be relieved of liability.

It is possible that cases may arise where it may be difficult for the carrier to determine whether the defect will be held by the local immigration authorities to be an excluding one. But even in such cases we submit that the steamship company should be held to act at its peril if it transports the alien. The fact that Congress has imposed a requirement which necessitates care in its observance affords no basis for ignoring the requirement. It is significant that there are certain classes of inadmissible aliens, such as criminals, polygamists, anarchists, etc. (see Section 3 of the Immigration Act of 1917, U. S. C., Title 8, Secs. 136–137), who may be transported by a carrier without penalty. Congress thus has expressly differentiated between excluding de-

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retary, and they were confident that the Secretary could be relied upon to administer the law fairly. See Senate Document No. 62, 57th Cong., 2d Sess., pp. 68, 191, 214, 244, 295, 296, 298, 299.

fects which it is reasonable to require the carrier to detect and others which it would be unreasonable to require the carriers to ascertain. Ample discretion has been imposed in the Secretary, the administrative official, to deal fairly with all cases where the carrier has acted with due diligence and in good faith."[17]

The petitioner relies upon *Compagnie Francaise De Navigation a Vapeur* v. *Elting,* 19 F. (2d) 773 (C. C. A. 2d). That case, if sound, is distinguishable. There the court was construing Section 6 of the Quota Act of 1921, as amended by the Act of May 11, 1922, which imposed a fine for bringing to the United States an alien inadmissible under that Act and provided that such fine should not be refunded unless it appeared to the satisfaction of the Secretary of Labor that the alien's inadmissibility could not have been ascertained by the steamship company prior to embarkation by the exercise of reasonable diligence. The alien in question had lawfully resided in the United States and claimed to be returning to an unrelinquished domicile. He was admissible as of right if he could show that his domicile had not been relinquished. The court held that *under the then applicable regulations* such

[17] A contention substantially similar to the one just discussed is answered more at length at pp. 21–29, of the brief for the petitioner in *Elting* v. *North German Lloyd*, No. 42, present term, *supra*. The Court is respectfully referred to the argument there made.

alien was entitled to come to a port of the United States for the purpose of presenting evidence on the disputed issue of abandonment, and that since the alien had the right, under the regulations, to come to the United States to present his claim for admission, the steamship company had not violated the statute by transporting him.

That the *Compagnie Francaise* case does not stand for the proposition that there can be no fine imposed for bringing to the United States a diseased or defective alien whose admissibility can not be finally determined except in the United States, is apparent from the same court's decision in *North German Lloyd* v. *Elting,* 48 F. (2d) 547, which involved the same statute as the instant case. In the latter case the court sustained fines imposed for bringing to the United States aliens with defects which might affect their ability to earn a living and whose admissibility could not be determined with certainty prior to embarkation for the same reasons that the admissibility of Marrara and Sbragia could not be determined definitely prior to embarkation. In the latter case it was further held that the fact that the Secretary possessed the power, under Section 21 of the Immigration Act of 1917 (U. S. C., Title 8, Sec. 158), to admit defective aliens under bond in certain cases, did not relieve the steamship company from fines in the event such aliens were not admitted by the Secretary.

The fifth and twelfth causes of action involve, respectively, the aliens Capaldo and Perazzi, whose ultimate destination was Canada and who intended merely to pass through the United States in transit. Both aliens held transit certificates signed by the American consul in Italy. Capaldo was found to be affected with a loathsome disease and Perazzi tc be feeble-minded, and both were excluded. (R. 7, 15, 253–255, 292–293, 303, 356.) The petitioner contends that the fines as to these aliens were illegally imposed since, it is asserted, the statute contemplates the imposition of fines only in the case of *immigrants* coming to the United States, and does not apply to aliens who seek to be admitted *only for transit* to another country.

Section 9 expressly states that "it shall be unlawful * * * to bring to the United States * * * any *alien* * * *." The obvious purpose of Section 9 was to exclude from this country diseased and defective foreigners, many of whom, prior to the enactment of the penalty provisions here involved, were eluding the examiners at the ports of arrival.[18] There was also the purpose to prevent the spread of disease among the passengers on shipboard during the voyage to this country. (See *Oceanic Steam Navigation Co.* v. *Stranahan,* 214 U. S. 320, 332, 343; see also Senate Document No. 62, 57th Cong., 2d Sess., p. viii.) In the cases of Capaldo and Perazzi the dangers incident

[18] See Senate Report No. 2119, 57th Cong., 1st Sess., p. vi.

to the admission of diseased and defective aliens existed although their stay in this country was to be only temporary, and there was also the risk that the aliens might change their minds and remain in the United States indefinitely, although in violation of law.

The liability for the fine is predicated upon the bringing to the United States of an alien who is diseased or defective. There can be no distinction in this regard between an alien who comes for permanent or temporary residence and one who enters the country merely for the purpose of transit to another country. Assuming that Capaldo and Perazzi intended to enter the United States only for the purpose of transit to Canada, the fact remains that both aliens intended at the time of foreign embarkation *to enter the United States,* and this was known to the petitioner. Clearly such aliens were "brought" to the United States within the meaning of Section 9, and accordingly cases such as *Taylor* v. *United States,* 207 U. S. 120, and *Dollar Steamship Line* v. *Elting,* 51 F. (2d) 1035 (C. C. A. 2d), where, so far as could be known by the steamship company, the aliens at the time of embarkation never intended *to enter the United States,* are not analogous.[19]

The fourteenth cause of action involves the alien Costigliolo, a seaman who came to New York as a

[19] The *Taylor* case involved a statute which is not fairly comparable to the one involved here.

steerage *passenger,* at the expense of his employer, to board an Italian vessel at New York as a member of the crew to take the vessel back to Italy. He was found to be afflicted with a loathsome disease and excluded. (R. 18, 334–341.) What has been just stated with reference to Capaldo and Perazzi applies with equal force to Costigliolo. That Costigliolo was properly excluded there can be no doubt. *Karnuth* v. *United States,* 279 U. S. 231, 244. While he did not intend to remain permanently in the United States, his plans nevertheless necessarily required *an admission* to the United States, although his stay was to be brief.

The thirteenth cause of action involves the alien Crimi, who was totally blind, and who claimed to be coming to the United States as a student, having been issued a nonquota immigrant visa under Section 4 (e) of the 1924 Act (U. S. C., Title 8, Sec. 204 (e)) by the American consul. Upon arrival he was found not to be a *bona fide* student (R. 307, 324, 327), and was excluded by reason of being afflicted with a physical defect which might affect his ability to earn a living. (R. 16–17, 306–334.) The fifteenth cause of action involves the alien Nelli, an imbecile, a minor, and the son of a United States citizen residing in the United States. Nelli's father had filed a petition with the Commissioner General under Section 9 (b) of the Immi-

gration Act of 1924 (U. S. C., Title 8, Sec. 209 (b)), for the issuance of a nonquota visa to Nelli under Section 4 (a) of the Immigration Act of 1924 (U. S. C., Title 8, Sec. 204 (a)), in which it was revealed that his son was feeble-minded. The Commissioner General approved the petition, whereupon, at the direction of the Secretary of State, a nonquota visa was issued to Nelli.[20] Upon his arrival he was held inadmissible by reason of his mental disability.[21] (R. 19, 358, 390–403.)

The petitioner contends that it was justified in accepting these aliens for transportation on the faith of the consular visas specially granted to them, and that the visas "were evidence either that the Department had already decided that this alien was admissible or had reserved the question for final determination at the port of arrival." But the petitioner was clearly unwarranted in accepting the visas as evidence of the aliens' admissibility in view of the specific provision of Section

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[20] See Section 9 (e) of the Immigration Act of 1924 (U. S. C., Title 8, Sec. 209 (e)).

[21] Before the Board of Special Inquiry at Ellis Island, the alien's father testified, with respect to the alien, as follows (R. 396):

"Q. What did the steamship officials say to you about him?

"A. He said I may have trouble, but as the American consul gave a visa to him he might get through."

This would indicate that in Nelli's case the petitioner "took a chance."

2(g) of the 1924 Act[22] (U. S. C., Title 8, Sec. 202(g)), then in force, that—

> Nothing in this act shall be construed to entitle an immigrant, to whom an immigration visa has been issued, to enter the United States, if, upon arrival in the United States, he is found to be inadmissible to the United States under the immigration laws. * * *

See *Chang Chan* v. *Nagle,* 268 U. S. 346.

The petitioner relies upon *Compagnie Francaise De Navigation a Vapeur* v. *Elting,* 19 F. (2d) 773 (C. C. A. 2d), *supra,* and *Spanish Royal Mail Line Agency, Inc.,* v. *United States,* 45 F. (2d) 404 (S. D. N. Y.). These decisions, if sound, are plainly distinguishable.

The *Compagnie Francaise* case, discussed at pp. 34–35, *supra,* did not rest on the fact that the alien possessed a visa, but upon the fact that the applicable regulations expressly permitted him to come to the United States to present his claim for admission.

The *Spanish Royal Mail Line* case involves the third sentence of Section 9 of the Immigration Act of 1917, which makes it unlawful to bring to the United States aliens who are excluded because of being illiterate, and imposes a fine if it shall appear to the satisfaction of the Secretary of Labor that this disability "might have been detected *by the exercise of reasonable precaution* prior to the de-

[22] See also Section 9 (f) of that Act (U. S. C., Title 8, Sec. 209 (f), which is in practically the same language.

parture of such aliens from a foreign port." The alien in question, who had formerly resided in the United States, held a permit to reenter this country, issued by the Commissioner General. The court found that as a matter of law the reentry permit could not have been issued unless the Commissioner General had found that the alien had previously been legally admitted, which finding in turn necessarily imported that at the time of his original entry the alien was able to read.[23] The court apparently held that the Secretary's ruling that the steamship company had failed to exercise "reasonable precaution," where it had relied upon the alien's possession of the reentry permit without making an independent investigation as to whether the alien was able to read, was arbitrary.

In the instant case, for reasons just stated, there exists no statutory basis for giving to the visas issued to Crimi and Nelli the legal significance which the court in the *Spanish Royal Mail Line* case held to be necessarily attached to the re-entry permit possessed by the alien there involved. Moreover, the statutory requirement in the instant case is not "reasonable diligence," as in the *Compagnie Francaise* case, or "reasonable precaution," as in the *Spanish Royal Mail Line* case but solely whether, in the opinion of the Secretary the disabilities might have been detected by means of a competent

[23] See Section 10 of the Immigration Act of 1924 (U. S. C., Title 8, Sec. 210). See also *United States ex rel. Iodice* v. *Wixon*, 56 F. (2d) 824 (C. C. A. 2d).

medical examination."[24] It may be conceded that the petitioner acted in good faith in the *Crimi* and *Nelli* cases and that it was not negligent. But the statutory test is not that of good faith or due care. As the court below pointed out (R. 415):

> * * * the plaintiff was bound to act with knowledge of the law and to know that it could not rely on an immigration visa to show that the alien was entitled to admission when he was in fact within one of the classes excluded.

Cf. *Lloyd Royal Belge Societe Anonyme* v. *Elting*, 55 F. (2d) 340 (S. D. N. Y.); *United States* v. *New York S. S. Co.*, 269 U. S. 304, 313.

CONCLUSION

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

THOMAS D. THACHER,
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OCTOBER, 1932.

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[24] It should be borne in mind that even in cases where the statutory requirement is "reasonable diligence," or "reasonable precaution," to ascertain the excluding defect or the inadmissibility of the alien, the one to be satisfied as to whether the statutory test has been met is the Secretary of Labor, and his decision is final. See brief for the petitioner in *Elting* v. *North German Lloyd*, No. 42, present term, *supra*.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

Section 9 of the Immigration Act of 1917, as amended by Section 26 of the Immigration Act of 1924, c. 190, 43 Stat. 153, 166 (U. S. C., Title 8, Sec. 145), provides:

> That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien

for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a living, as contemplated in section 3 of this Act, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $250, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien who is excluded by the provisions of section 3 of this Act because unable to read, or who is excluded by the terms of section 3 of this Act as a native of that portion of the Continent of Asia and the islands adjacent thereto described in said section, and if it shall appear to the satisfaction of the Secretary of Labor that these disabilities might have been detected by the exercise of reasonable precau-

tion prior to the departure of such aliens from a foreign port, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien on whose account assessed.

If a fine is imposed under this section for the bringing of an alien to the United States, and if such alien is accompanied by another alien who is excluded from admission by the last proviso of section 18 of this Act, the person liable for such fine shall pay to the collector of customs, in addition to such fine but as a part thereof, a sum equal to that paid by such accompanying alien for his transportation from his initial point of departure indicated in his ticket, to the point of arrival, such sum to be delivered by the collector of customs to the accompanying alien when deported. And no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fines, or while the fines remain unpaid, nor shall such fines be remitted or refunded: *Provided,* That clearance may be granted prior to the determination of such questions upon the deposit of a sum sufficient to cover such fines or of a bond with sufficient surety to secure the payment thereof, approved by the collector of customs: *Provided further,* That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or ex-

ceptions to section 3 of this Act exempted from the excluding provisions of said section.

IMMIGRATION RULES OF JANUARY 1, 1930

RULE 23. IMPOSITION AND COLLECTION OF FINES

Subdivision A.—Notice of intention to fine

PARAGRAPH 1. Whenever the medical examiner certifies that an arriving alien is afflicted with any of the diseases or disabilities mentioned in section 9 of the act of February 5, 1917, as amended by the immigration act of 1924, and that, in his judgment, such disease or disability existed at the time of foreign embarkation and might have been detected by means of a competent medical examination at such time, the vessel or transportation agency shall pay to the collector of customs (under notice of intention to fine) $1,000 for each of such aliens and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival.

PAR. 2. In the case of any alien afflicted with any mental defect other than those specifically named in said section 9, as amended, or physical defect of a nature which may affect ability to earn a living, when certified as in paragraph 1 hereof, the vessel or transportation agency shall pay to the collector of customs (under notice of intention to fine) $250 for each of such aliens and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival.

* * * * *

Subdivision B.—Service of notice

PARAGRAPH 1. The officer in charge shall serve promptly upon the master, agent, owner, or consignee of the vessel, or other responsible person, a notice to the effect that the ascertained facts indicate that a fine should be imposed under the section of the law involved in the particular case; that he will be allowed 60 days from the date of service of the notice within which to submit evidence and be heard in reference to the matter; and that in the meantime the vessel involved, which is the subject of fine proceedings, will be granted clearance papers upon the condition that he deposit with the collector of customs, prior to the time of sailing, a sum equal to the fine specified in the said notice, such sum to be held as security for the payment of the fine in the event it should be imposed (or bond with sufficient surety approved by the collector of customs to secure payment thereof, where such is permitted by the act of May 26, 1924), and, in cases arising under section 9 of the act of February 5, 1917, as amended by the immigration act of 1924, or under section 16 of the immigration act of 1924, a sum equal to that paid by the alien involved for his transportation to this country from the initial point of departure, such latter sum to be held by the collector of customs as a special deposit and to be delivered to the deported alien through the American consul, if fine is imposed; and when such alien is accompanied by another alien who is excluded from admission a further sum equal to that paid by such accompanying alien for his transportation to this country from the initial point of departure, which likewise is to be held by the collector of cus-

toms and delivered to the accompanying alien when deportation is effected.

PAR. 2. Such notice shall be prepared in quadruplicate. The original shall be served on the master, agent, owner, or consignee of the vessel either by (*a*) delivering it to him in person, or (*b*) leaving it at his office, or, whenever the immigration officer in charge finds either of these methods of service inconvenient, (*c*) mailing it to him. When service is made by delivery it shall be admitted in writing upon the duplicate and triplicate and the admission witnessed by the server. If admission be refused, or in case of service by either of the other methods, the server shall note the method and date of service on the duplicate and triplicate. The duplicate shall be retained by the immigration officer in charge. The triplicate shall be delivered to the collector of customs for the district wherein the port of arrival is located, who shall withhold clearance papers until the deposit is made and the quadruplicate shall be forwarded to the bureau when the matter of fine is presented for departmental consideration.

Subdivision C.—Submission of evidence and report

PARAGRAPH 1. If said deposit be made, or bond furnished, further proceedings shall be suspended during said period of 60 days, or until earlier submission of evidence to show why the proposed fine should not be imposed. Such evidence, if submitted, shall be forwarded to the bureau, together with the medical certificate, if any, quadruplicate notice, and the data or evidence on which the notice was based, and the officer in charge shall pre-

sent at the same time his written views as to whether the fine should be imposed. If within 60 days no evidence has been submitted, or as soon as it is known that the fine will not be contested, the officer in charge shall report the facts to the bureau.

Subdivision D.—Remission or mitigation of fine

PARAGRAPH 1. The fine prescribed by section 35 of the act of February 5, 1917, for bringing to United States ports as employees of vessels aliens afflicted with idiocy, imbecility, insanity, epilepsy, tuberculosis in any form, or a loathsome contagious or dangerous contagious disease will be mitigated or remitted by the department only upon a clear and convincing showing to the effect that the imposition of the full penalty or of any part thereof would be unjust or inequitable under the circumstances of the particular case, including the submission of satisfactory evidence that the seamen were subjected to a competent medical examination before being signed on as members of the crew.

Subdivision E.—Action on decision

PARAGRAPH 1. Upon receipt of the departmental decision the collector of customs shall be notified of its terms. If the fine is imposed, the amount retained as security shall be disposed of by the collector in accordance with law. If the fine is not imposed, he shall return such amount to the depositor.

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DEC 29 193

Supreme Court of the United States

OCTOBER TERM, 1932. No. 48.

LLOYD SABAUDO SOCIETA ANONIMA PER AZIONI,
Petitioner,

against

PHILIP ELTING, Collector of Customs of the Port of New York,
Respondent.

PETITION FOR REHEARING.

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Supreme Court of the United States

No. 48.—October Term, 1932.

Lloyd Sabaudo Societa Anonima Per Azioni, Petitioner, *against* Philip Elting, Collector of Customs of the Port of New York, Respondent.	On Writ of Certiorari to United States Circuit Court of Appeals for the Second Circuit.

PETITION FOR REHEARING.

The Petitioner respectfully prays that the Court grant a rehearing in the above entitled case for a reconsideration of its opinion handed down therein on the 5th day of December, 1932, and as reasons therefor submits the following:

I.

In the proceedings before the Secretary of Labor on all of the fines involved herein the Petitioner submitted a statement in writing, varying somewhat in language, signed by a responsible representative, to the effect that it had employed competent medical examiners of long practice and experience who carefully examined each alien prior to embarkation, and that the condition certified was not detected by such examination (Opinion, p. 3).

The opinion herein has recognized that those written statements, although unverified, were evidence which must be considered by the Secretary of Labor, and has held that

if the Secretary failed to consider them he acted beyond his authority. On page 7 of the opinion it is said:

> "As the protests were not rejected by the Secretary, the facts they disclosed were properly before him and were evidence which, in an administrative proceeding, must be considered and acted upon by the administrative officer."

Later in the opinion, it was said:

> "If the Secretary failed to consider evidence before him, he exceeded his authority."

In referring to the protests other than that presented in the *Fusco* case, the opinion further said (p. 7):

> "But we cannot say, on the records before us, that the Secretary did not consider them, as such [evidence], for what they were worth, regarding the official medical certificates as conflicting evidence entitled to greater weight. No ground exists, therefore, for setting aside his determination in these cases. The only question is the weight of the evidence, as to which the Secretary's conclusion is final."

The foregoing conclusion plainly overlooks the fact that the Government has insisted from the outset that facts presented to the Secretary in unverified statements were not evidence, and, at the trial, produced affirmative proof that they were not treated as evidence by the officials who imposed the fines. Unless these facts are to be disregarded, the judgment below must be reversed as to all causes of action except the 13th and 15th.

The complaint contained allegations in each cause of action that the alien in question, before embarkation, was subjected to competent medical examinations which showed him to be free of any of the diseases or disabilities referred

to in the Statute, and that he was free of any such disease or disability, or if so afflicted the fact could not have been detected by means of a competent medical examination at the time of embarkation, and it was further alleged that *evidence of those facts was duly submitted to the Secretary of Labor* (see paragraphs 4 and 5 of the complaint, R., p. 2 and corresponding paragraphs in the other causes of action). *Those allegations were denied by the answer* (see third paragraph of answer, R. 22, and corresponding paragraphs relating to the other causes of action).

The Government contended that the petitioner had not submitted anything to the Secretary of Labor that could be treated as evidence, and at the trial, produced Browning, the man who wrote the decisions in this case, as a witness to establish this point. He was qualified as an expert on Departmental practice, and his testimony (R. 131-142) leaves no doubt on this point. He said, "No, they are not evidence" (R. 132). "That petition or plea is always reviewed in connection with the evidence that is submitted. * * * I take it as a plea or petition" (R. 136, 137).

This evidence was referred to in Petitioner's brief at pages 10-11 and page 39.

Inasmuch as this Court has held that the sole issue in this case is whether the Secretary considered, and acted fairly on the evidence submitted to him, the testimony of Captain Browning, which goes directly to that issue and was offered in support of an issue made in the pleadings, although it was eventually rejected by the Trial Court (R. 202), cannot be disregarded in determining whether the Secretary acted unfairly or under an erroneous impression of the law.

No discussion is necessary to establish the admissibility of Browning's testimony. *Tang Tun* v. *Edsell*, 223 U. S.

673, 680; cf. *Frank* v. *Mangnum*, 237 U. S. 309, 331. It is not in the same category with the additional evidence of the examinations of the aliens, which this Court has held to be inadmissible.

The ambiguity of the opinions imposing the fines, which was recognized in the opinion, is thus removed by Browning's testimony. Taking the two together, it is clear that the Department treated the evidence submitted by the Petitioner merely as a plea or petition. The decisions characterized this evidence as a "protest," thus distinguishing it from evidence, and usually concluded with language to the following effect:

> "In view of the official medical certificate, however, the Bureau finds itself unable to accord favorable consideration to this protest" (R. 214); or
>
> "In view of the official medical certificate, the fact that the alien was excluded and deported thereunder, and the lack of proof that the disability did not exist at the time of embarkation, it is felt that the penalty as provided in Section 9 should be imposed" (R., pp. 222, 223); or
>
> "In view of the official medical certificate, however, it is believed that the disease did exist prior to embarkation and that it could have been detected" (R., p. 252); or
>
> "In view of the official medical certificate, however, the Bureau finds itself unable to accord favorable consideration to this protest, and feels that the penalty as provided in Section 9 should be imposed" (R., p. 257).

A more striking illustration is found in the case of *Leonardo Perraei*, where there were two decisions, the first having been written before the protest was received. In that opinion the Department referred to the opinion of the

Public Health Surgeons, noted that no protest had been received, and then said, "In the Bureau's opinion, the condition mentioned above did exist, and might have been detected by means of a competent medical examination, at the time the alien embarked" (R., p. 296).

After receipt of the protest, which was dated two weeks before the foregoing decision, and had been delayed by the Commissioner of Immigration, another decision was written which makes no reference to the protest except to acknowledge its receipt, and then in effect it reiterates the decision previously made, in the following words (italics ours):

> "In this instance the Bureau and Department, after reviewing the evidence with care, *found* that the condition of the alien could have been detected at the time he was embarked, and his inadmissibility to the United States ascertained at that time" (R. 293).

The use of the past tense in the foregoing decision shows that the Department referred to its previous decision and that the evidence there referred to was the medical certificate only. All other decisions are expressed in the present tense.

Other decisions will be found in the record at pages 235, 245, 334, 367, 375.

These decisions were not decisions in the ordinary sense, but rather letters of instruction to the Commissioner at Ellis Island. The second "decision" in the *Perazzi* case amounted to nothing more than an acknowledgment of the receipt of the Commissioner's letter enclosing the protest and a statement that the case had already been decided on the basis of the medical certificate.

In view of Browning's testimony and the language of the Departmental decisions it cannot be doubted that those acting for the Secretary of Labor in imposing the fines either treated the facts presented by the Petitioner as no evidence or that they treated the certificates of the American doctors as conclusive. Either position falls under the condemnation of the opinion in this case, because this Court has held that such certificates are not conclusive (pp. 5-6). The Government has contended that the doctors' certificates were not treated as conclusive, but it has not only admitted, but has insisted and proved that the facts presented by the Petitioner in unverified form were not treated as evidence by the Department of Labor.

The stress which was placed upon the *Fusco* case in the Petitioner's brief and upon the argument probably resulted in a misconception by the Court of the true factual situation in the other causes of action. But the issue was clearly presented throughout the litigation and was decided in our favor by this Court, but because of the misconception of the factual situation, the principle stated by the Court was not carried to its logical conclusion and applied to other causes of action.

The Secretary exceeded his authority in imposing the fines without considering evidence which was properly before him. These remarks apply to all of the causes of action except the thirteenth and fifteenth, which involve the aliens Crimi and Nelli and turn upon considerations which have been otherwise dealt with in the opinion.

II.

The opinion in this case while not entering into an extended discussion of the Second Point made in our brief,

that a fundamental question is involved which requires a trial *de novo,* introduces a new light on the question which warrants its reconsideration.

The present opinion qualifies the decision in the *Stranahan* case only to the extent that it holds that the certificate of the examining doctors at Ellis Island is not conclusive. The *Stranahan* case held that the power of the Secretary to act is dependent upon a finding of fact that the steamship company failed to perform its statutory duty of examination before embarkation. That was made the jurisdictional question by the *Stranahan* decision, but with the implication that the question was resolved in favor of the jurisdiction of the Secretary by reason of the conclusive effect given to the certificate of the American doctors.

Inasmuch as the Court now holds that the certificate is not conclusive, the jurisdictional question of foreign detectability remains open and must be determined upon all the evidence submitted in a trial *de novo.*

The language of the *Stranahan* case to which we refer is as follows:

> "the *power* to impose the exaction which the statute confers on the Secretary is lodged in that officer *only* when it results from the official medical examination at the point of arrival not only that an alien is afflicted with one of the prohibited diseases, but that the stage of the malady as disclosed by the examination establishes that the alien was suffering with the disease at the time of embarkation, and that such fact would have been then discovered *had* the medical examination been then made by the vessel or its owners, as the statute requires."

and the *Stranahan* opinion further supports that conclusion by quoting from the Senate Committee on Immigration:

> "This sufficiently guards the transportation lines from an unjust and hasty imposition of the penalty, insures a careful observance of the law, and leaves in their own hands the power to escape *even a risk* of the fine being imposed, since they can refuse to take on board even the most doubtful case until certified by competent medical authority to be entirely cured."

Since foreign detectability is the fundamental or jurisdictional question as the *Stranahan* case holds, then the issue is one which is always open to judicial determination *de novo*. *Crowell* v. *Bensor*, 285 U. S. 22; *Ng. Fung Ho* v. *White*, 259 U. S. 276; *In re Fassett*, 142 U. S. 479; *Federal Trade Comm.* v. *Klesner*, 280 U. S. 19; all of which are to the same effect as *Miller* v. *Horton*, 152 Mass. 540, which held that if an administrative officer condemns a horse on the ground that it is afflicted with a contagious disease a court may thereafter determine *de novo* whether the disease in fact existed.

In this case the issue was presented to the Secretary by written statements of fact which this court held to be competent evidence but which the Secretary ignored. But the proceedings before the Secretary are not particularly material in relation to the question as to whether or not he had fundamental jurisdiction.

On the trial before the district judge on the jurisdictional issue further proof was submitted in the form of depositions and oral testimony. We think it has been admitted by all the courts in this proceeding that the testimony so offered established that competent examinations abroad were had and that any court upon that evidence would hold as an issue of fact that the Secretary did not have jurisdic-

tion to impose the fine because there had been no neglect in the examination of these immigrants.

This doctrine that a jurisdictional issue is always triable *de novo* should not be ignored in this case for the especial reason that the *Stranahan* decision and the Senate Committee plainly represented to steamship companies that they could avoid "even the risk" of these penalties if they would observe the duty laid upon them by the statute of subjecting aliens to competent examinations before embarkation. That duty was performed. Proof of its performance has been offered, and since the proof goes to the very power of the Secretary to act it should be received and considered.

Conclusion.

For the foregoing reasons your Petitioner submits that upon a reconsideration of the opinion herein the judgment below should be reversed as to causes of action first, second, third, fourth, fifth, sixth, seventh, eighth, twelfth and fourteenth.

Respectfully submitted,

Delbert M. Tibbetts,
Attorney for Petitioner.

Gaspare M. Cusumano,
Joseph F. Luley,
Richard L. Sullivan,
Of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

December 28, 1932.

Delbert M. Tibbetts
Attorney.

SUPREME COURT OF THE UNITED STATES.

No. 48.—October Term, 1932.

Lloyd Sabaudo Societa Anonima Per Azioni, Petitioner, *vs.* Philip Elting, Collector of Customs of the Port of New York.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 5, 1932.]

Mr. Justice Stone delivered the opinion of the Court.

Petitioner, a steamship transportation company, brought suit in the District Court for Southern New York, to recover from the Collector of Customs certain fines alleged to have been illegally exacted by the Secretary of Labor under § 9 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 880, or its amendment by § 26 of the Immigration Act of 1924, c. 190, 43 Stat. 153, 166, 8 U. S. C., § 145. The complaint stated fifteen causes of action, one for each fine involved. The trial court directed a verdict for the petitioner on three causes of action, the 9th, 11th and 15th, and for the respondent on all the others, and gave judgment accordingly. 45 F. (2d) 405, see also 46 F. (2d) 315. Upon appeal by both parties the judgment of the District Court was affirmed by the Court of Appeals for the Second Circuit, 55 F. (2d) 1048, except as to the 15th cause of action, with respect to which it was reversed. As certiorari was granted, 286 U. S. 539, on petition of the steamship company alone, only so much of the judgment below as decided in favor of the Collector is brought before us for review. *Federal Trade Commission* v. *Pacific Paper Ass'n*, 273 U. S. 52, 66; *The Malcolm Baxter, Jr.*, 277 U. S. 323.

Section 9 of the Immigration Act, as amended, provides that:

"it shall be unlawful for any person, including any transportation company, . . . to bring to the United States . . . from a foreign country . . . any alien affected with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any

form, or a loathsome or dangerous contagious disease, and if it shall appear, to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company . . . shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation . . . , for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed . . . ".

The same section also makes it unlawful

"to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a living, as contemplated in § 3 of this Act, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time, such person shall pay to the collector of customs of the customs district in which the port of arrival is located, the sum of $250, and, in addition a sum equal to that paid by such alien for his transportation . . . ".

Between the years 1923 and 1927 the petitioner brought to the United States in its vessels the thirteen aliens with respect to whose transportation the fines now in question were imposed. All were found, upon arrival, to be inadmissible because they were afflicted either with one of the diseases specified in § 9, or with a physical defect which might affect the alien's ability to earn a living. In each case in the proceedings before the Board of Special Inquiry to pass on the admissibility of the alien, the examining physicians of the Health Department certified to his diseased condition or disability on arrival, adding: "In our opinion the condition herein certified might have been detected by competent medical examination at the port of embarkation". In each instance the petitioner was notified of the certificate of the medical examiners, advised that such findings indicated its liability to fine under § 9 of the Act of 1917 or its amendment of 1924, and given thirty or sixty days in which to have a hearing. In each case the petitioner responded to the notice by depositing the amount of

the possible fine, in order to secure clearance of the vessel,[1] and transmitting an unverified letter of protest against the imposition of the fine, stating generally that it was the regular practice of the petitioner to have each immigrant carefully examined by competent doctors before embarkation and that, therefore, the disease or disability either did not exist at the time of embarkation or could not then have been discovered by means of competent medical examination, or was of such a nature as could not affect the alien's ability to earn a living. In one case, that of Fusco, stated in the tenth cause of action, the letter of protest was accompanied by affidavits, tending to confirm the statements contained in the protests. In all thirteen cases fines were imposed by the Secretary and the funds deposited by petitioner were retained by the Government.

The "files" or "records" upon which the Secretary of Labor based his decisions that the fines should be imposed, consisted in general of the transcript of the hearing and examination before the Board of Special Inquiry at Ellis Island, in which the admissibility of the alien was passed upon, which included a reference to the medical certificate, the petitioner's letter of protest and any accompanying documents, and various communications of an inter-departmental character relating to the disposition of the alien by the Secretary.

At the trial in the District Court, the petitioner introduced evidence which had not been presented to the Department of Labor tending to show that a competent medical examination had been made of the aliens at the port of embarkation and that the diseases or disabilities, on the basis of which the fines had been imposed, had not in fact been discovered and were not discoverable at that time by such an examination. Although the trial judge thought that this evidence tended to show in detail the thoroughness of the examinations and the competence of the physicians, he struck out this class of testimony and held, on the basis of the record made before the Secretary, that there was evidence supporting his action.

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[1]The statute provides that no vessel shall be granted clearance pending a determination of the question whether the fine should be imposed, except upon deposit of the amount of the possible fine or of a bond to secure its payment.

The petitioner contends here, as it did before the courts below, that the evidence offered at the trial was erroneously excluded; that if § 9 is construed to preclude a judicial trial of the issues before the Secretary, it denies to petitioner due process of law and, finally, that in any case the fines were not validly imposed because the Secretary of Labor abused the discretion reposed in him by the statute.

The first two objections are untenable. By the words of the statute the Secretary's is the only voice authorized to express the will of the United States with respect to the imposition of the fines; the judgment of a court may not be substituted for the discretion which, under the statute, he alone may exercise. In conferring that authority upon an administrative officer, Congress did not transcend constitutional limitations. Under the Constitution and laws of the United States, control of the admission of aliens is committed exclusively to Congress and, in the exercise of that control it may lawfully impose appropriate obligations, sanction their enforcement by reasonable money penalties, and invest in administrative officials the power to impose and enforce them. *Oceanic Navigation Co.* v. *Stranahan,* 214 U. S. 320; *Passavant* v. *United States,* 148 U. S. 214; see *Hampton & Co.* v. *United States,* 276 U. S. 394, 406; *Navigazione Libera Triestina* v. *United States,* 36 F. (2d) 631; *Zakonaite* v. *Wolf,* 226 U. S. 272, 275.

In *Oceanic Navigation Co.* v. *Stranahan, supra,* this Court upheld the constitutionality of § 9 of the Immigration Act of 1903, c. 1012, 32 Stat. 1213, 1215, which is substantially the same as the present section, except that it imposed smaller penalties. Petitioner contends that as the fines have been increased tenfold, the issue of liability has become so grave that the *Stranahan* case is no longer controlling and the imposition of the fines by administrative action is a denial of due process unless opportunity is afforded at some stage to test their validity in court by a trial of the facts *de novo.*

As was pointed out in the *Stranahan* case, the statute imposing the fines must be regarded as an incident to the exercise by Congress of its plenary power to control the admission of aliens, and due process of law does not require that the courts, rather than administrative officers, be charged, in any case, with determining the facts upon which the imposition of such a fine depends. It follows that as the fines are not invalid, however imposed, be-

cause unreasonable or confiscatory in amount, which is conceded, Congress may choose the administrative rather than the judicial method of imposing them. Indeed, the Court rested its decision in *Oceanic Navigation Co.* v. *Stranahan, supra,* on the authority of cases arising under the revenue laws, authorizing the administrative imposition of civil penalties frequently much greater than those imposed here. *Bartlett* v. *Kane,* 16 How. 263, 274; *Passavant* v. *United States, supra; Origet* v. *Hedden,* 155 U. S. 228; see *Murray's Lessee* v. *Hoboken Land and Improvement Co.,* 18 How. 272.

The action of the Secretary is, nevertheless, subject to some judicial review, as the courts below held. The courts may determine whether his action is within his statutory authority, compare *Gonzales* v. *Williams,* 192 U. S. 1; *Gegiow* v. *Uhl,* 239 U. S. 3, whether there was any evidence before him to support his determination, compare *Vajtauer* v. *Commissioner of Immigration,* 273 U. S. 103, and whether the procedure which he adopted in making it satisfies elementary standards of fairness and reasonableness, essential to the due administration of the summary proceeding which Congress has authorized. Compare *Kwock Jan Fat* v. *White,* 253 U. S. 454; *Tang Tun* v. *Edsell,* 223 U. S. 673; *Chin Yow* v. *United States,* 208 U. S. 8, 12; *The Japanese Immigrant Case,* 189 U. S. 86, 100, 101; see *United States ex rel. Iorio* v. *Day,* 34 F. (2d) 920; *Whitfield* v. *Hanges,* 222 Fed. 745.

The statute plainly authorizes the imposition of the fine only if it shall appear, to the satisfaction of the Secretary, that the existence of the disease or disability for which the alien was excluded, "might have been detected by means of a competent medical examination" at the time of sailing. That § 9 imposed upon the Secretary the official duty and responsibility of making such a determination was held by both courts below and is not questioned by the Government. Accordingly, his action in particular cases is subject to judicial review, within the limits mentioned. Whether, as was suggested in the *Stranahan* case, *supra,* 332, 342, Congress, while adhering to the statutory declaration that the fine is incurred only when the alien's disease or disability could have been detected by competent medical examination at the point of embarkation, might constitutionally provide that the certificate of the examining physician at the port of entry should be conclusive as to that fact,

we need not determine. We think it clear, despite language in the *Stranahan* case intimating a different view, that the statute, as it has been consistently construed administratively,[2] contemplates that the Secretary should fairly determine, after a hearing and upon the evidence, the facts establishing its violation.

Hence, we pass to the petitioner's remaining contention, that the action of the Secretary here in determining liability was arbitrary and unfair. In all of the cases before us the Secretary's decision was supported by at least one item of evidence. It was the certified opinion of the examining physicians of the Health Department, based upon a physical examination of the alien in the proceeding in which his admissibility was determined, that at an earlier date, that of embarkation, the existence of the disease with which he was afflicted upon arrival might have been detected by competent medical examination. This opinion as to the physical condition of the alien at the time and place of embarkation was not accompanied by a statement of the facts observed. Nevertheless, it was some evidence tending to establish the discoverability of the disease at the time of embarkation.

In all the cases but that of Fusco the evidence presented to the Secretary, in support of the petitioner's contention that the disease or disabiliy could not have been discovered by competent medical examination at the point of embarkation, consisted of the general statement in the protests that it was the practice of the company to conduct such an examination and, in a few instances, that the alien had received a consular visa. Petitioner argues that the alien must have received a medical examination in order to secure the visa. But, the protest did not assert that such was the fact, or invite the Secretary to consider it. No details were pre-

[2]Ever since the promulgation by the Department of Commerce and Labor, in January, 1905, of Department Circular No. 58, the administrative regulations have provided for a hearing. See Immigration Regulations of July 1, 1907, Rule 28, amended December, 1910; Immigration Rules of November 15, 1911, Rule 28, amended October, 1915; Immigration Rules of May 1, 1917, Rule 28, amended August, 1922; Immigration Rules of February 1, 1924, Rule 22; Immigration Rules of July 1, 1925, Rule 22; Immigration Rules of March 1, 1927, Rule 22; Immigration Rules of January 1, 1930, Rule 23.

During this time the general provisions of § 9 of the Act of 1903, 32 Stat. 1213, 1215, have been reenacted three times. § 9, Act of 1907, 34 Stat. 898, 901; § 9, Act of 1917, 39 Stat. 874, 880; § 26, Act of 1924, 43 Stat. 153, 166.

sented showing the nature or results of any medical examination claimed to have been made before sailing.

As the protests were not rejected by the Secretary, the facts they disclosed were properly before him and were evidence which, in an administrative proceeding, must be considered and acted upon by the administrative officer. *Vajtauer* v. *United States, supra; Tang Tun* v. *Edsell, supra.* But we cannot say, on the records before us, that the Secretary did not consider them, as such, for what they were worth, regarding the official medical certificates as conflicting evidence entitled to greater weight. No ground exists, therefore, for setting aside his determination in these cases. The only question is the weight of the evidence, as to which the Secretary's conclusion is final. Compare *Zakonaite* v. *Wolf, supra.*

In the case of Fusco, affidavits were submitted along with the protest and the two together tended to show with some certainty that the alien had been subjected to three medical examinations shortly before embarkation, once by the Royal Italian Immigration Service in Naples, once by a physician there enjoying the confidence of the American Consul, whose certificate was available to the Secretary, and once by petitioner's own ship physician, all of whom found the immigrant in good health.

The letter imposing the fine in the *Fusco* case does not show definitely whether the Secretary considered the evidence submitted by petitioner. It recites in one place, "The alien gave no history of the disease. Indeed, he was not questioned with regard thereto, and the only evidence in the record is the official certificate itself," and in another, "It is believed that the evidence placed in the record by the company is not sufficient to call into question the accuracy of the opinion expressed in the official medical certificate". We need not inquire whether this ambiguity in the record of itself requires the administrative determination to be set aside. Cf. *Tod* v. *Waldman,* 266 U. S. 113, 119, 120; *Mahler* v. *Eby,* 264 U. S. 32, 43; *Kwock Jan Fat* v. *White, supra,* 464. For the same result must follow if the record is considered, whichever way the doubt is resolved. If the Secretary failed to consider evidence before him, he exceeded his authority. If he treated the protest and affidavits as evidence relevant to the issue of the discoverability of the immigrant's disease at the time of sailing, but, nevertheless,

chose to rely upon the certified opinion of the examining physicians at Ellis Island, we think that more is involved than the weighing of the evidence, and that his determination cannot stand. For the medical opinions did not reveal the facts upon which they were based, and they were formulated by physicians who, so far as appears, were not apprised of the fact that three previous examinations of the nature described had been made. The detailed information as to those examinations which petitioner submitted to the Secretary in this case might reasonably have affected the expert judgment of the physicians at Ellis Island. In relying upon their opinion alone, without putting these additional facts before them, we think the Secretary acted arbitrarily and unfairly.

The Act of Congress confers on the Secretary great power, but it is not wholly uncontrolled. It is a power which must be exercised fairly, to the end that he may consider all evidence relevant to the determination which he is required to make, that he may arrive justly at his conclusion, and preserve such record of his action that it may be known that he has performed the duty which the law commands. Suppression of evidence or its concealment from a party whose rights are being determined by the administrative tribunal, has been held to be so unfair as to invalidate the administrative proceeding. *Kwock Jan Fat* v. *White, supra; Lewis* v. *Johnson,* 16 F. (2d) 180. It is equally offensive to conceal from the experts, whose judgment is accepted as controlling, facts which might properly have influenced their opinion.

Petitioner makes contentions, with respect to several of the cases, which require special consideration. They embrace the cases of aliens with physical defects affecting their ability to earn a living, aliens who came to the United States with a transit visa for the purpose of passing through the United States to their ultimate destination, Canada, and the case of an alien who came to the United States to enroll as a member of the crew of a vessel to be taken back to Italy. All entered or sought to enter the United States, and all were afflicted with a disease or disability specified in the statute. That their admissibility could not be determined in advance of their reaching the United States, that they were not seeking to remain permanently within the United States, are immaterial in the face of the express language of the statute, which imposes the penalty for bringing them here. See No. 42, *Elting* v. *North German Lloyd,* decided this day.

Crimi, who was blind, a disability which might affect his ability to earn a living, came to the United States as a student. He had a consular visa under § 4 (e) of the Act of 1924, c. 190, 43 Stat. 155, 8 U. S. C., § 204, which exempts from the quota students coming to the United States to attend an accredited school. To exempt the alien from the quota under § 4 (e), the school which he comes to attend must have been approved by the Department of Labor, and a list of such accredited schools is supplied to all American consuls. The alien was excluded because he did not come for the purpose of study at an accredited school. The petitioner insists that it was entitled, on the basis of the consular visa, to assume that the alien was admissible. But § 16 of the applicable Immigration Act of 1924, c. 190, 43 Stat. 163, 8 U. S. C., § 216, imposes the fine for bringing any quota immigrant, which Crimi was found to be, having a non-quota visa. It provides that the fine shall not be remitted or refunded unless it appears to the satisfaction of the Secretary of Labor that the vessel or transportation company "could not have ascertained, by the exercise of reasonable diligence" that the individual transported was a quota immigrant. The consular visa did not make Crimi a non-quota immigrant entitled to enter. Immigration Act of 1924, § 2 (g), 8 U. S. C., § 202 (g). To secure remission of the fine, the statute placed upon petitioner the burden of establishing to the satisfaction of the Secretary, that it could not have been ascertained by the exercise of reasonable diligence that the alien was a quota immigrant. Compare No. 42, *Elting* v. *North German Lloyd, supra.* We cannot say that the Secretary did not have ground for holding that reasonable inquiry of the alien or the Consul issuing the visa would have disclosed to petitioner that the alien was not coming to the United States for the purpose of studying in an accredited school.

The judgment will be reversed as to the tenth cause of action and affirmed as to all the others.

Reversed in part.

A true copy.

Test:

Clerk, Supreme Court, U. S.